

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

MISSOURI STATE CONFERENCE OF THE)
NATIONAL ASSOCIATION FOR THE)
ADVANCEMENT OF COLORED PEOPLE,)
REDDITT HUDSON, F. WILLIS JOHNSON,)
and DORIS BAILEY,)
)
Plaintiffs.)
v.)
)
) No 4:14-CV-2077 RWS
FERGUSON-FLORISSANT SCHOOL)
DISTRICT, and ST. LOUIS COUNTY)
BOARD OF ELECTIONS COMMISSIONERS,)
)
Defendants.)

BENCH TRIAL - VOLUME IV
BEFORE THE HONORABLE RODNEY W. SIPPEL
UNITED STATES DISTRICT JUDGE
JANUARY 14, 2016

APPEARANCES:

For Plaintiffs: Anthony E. Rothert, Esq.
Jessie M. Steffan, Esq.
AMERICAN CIVIL LIBERTIES UNION OF MISSOURI
FOUNDATION
454 Whittier Street
St. Louis, MO 63108

Julie A. Ebenstein, Esq.
Sophia Lin Lakin, Esq.
Dale E. Ho, Esq.
AMERICAN CIVIL LIBERTIES UNION FOUNDATION
125 Broad Street, 18th Floor
New York, NY 10004

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REPORTED BY: SHANNON L. WHITE, RMR, CRR, CSR, CCR
Official Court Reporter
United States District Court
111 South Tenth Street, Third Floor
St. Louis, MO 63102
(314) 244-7966

PRODUCED BY COURT REPORTER COMPUTER-AIDED TRANSCRIPTION

Appearances Continued:

For Plaintiffs: M. Laughlin McDonald, Esq.
ACLU VOTING RIGHTS PROJECT
2700 International Tower
229 Peachtree Street, N.E.
Atlanta, GA 30303

For Defendants: Cindy Reeds Ormsby, Esq.
Angela Gabel, Esq.
CROTZER AND ORMSBY, LLC
130 S. Bemiston, Suite 602
Clayton, MO 63105

Kathryn B. Forster, Esq.
CROTZER AND ORMSBY, LLC
130 S. Bemiston, Suite 602
Clayton, MO 63105

John A. Safarli, Esq.
FLOYD, PFLUEGER & RINGER, P.S.
200 West Thomas Street, Suite 500
Seattle, WA 98119

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1 **(PROCEEDINGS STARTED AT 9:10 AM.)**

2 THE COURT: Good morning. Any announcements before
3 we begin?

4 MS. ORMSBY: No, Your Honor.

5 THE COURT: If you would call your next witness. Oh,
6 we've been waiting for you.

7 MS. EBENSTEIN: Good to see you again, Your Honor.
8 Julie Ebenstein for the plaintiffs. Plaintiffs would like to
9 call Dr. Richard Engstrom.

10 THE COURT: If you would step forward, sir, and be
11 sworn.

12 **(WITNESS SWORN BY THE CLERK.)**

13 THE COURT: Are you ready?

14 MS. ORMSBY: Yes.

15 THE COURT: You may proceed.

16 **RICHARD L. ENGSTROM,**
17 **HAVING BEEN FIRST DULY SWORN, WAS EXAMINED AND TESTIFIED AS**
18 **FOLLOWS:**

19 **DIRECT EXAMINATION**

20 **BY MS. EBENSTEIN:**

21 Q Good morning, Dr. Engstrom.

22 A Hello. Morning.

23 Q Could you please state your name and spell your name for
24 the record?

25 A My name is Richard L. Engstrom. The first part is normal

1 spelling. The surname is E-n-g-s-t-r-o-m, as in mother.

2 Q And where do you live, Dr. Engstrom?

3 A I live in Chapel Hill, North Carolina.

4 Q Where do you work?

5 A Duke University.

6 Q What is your position at Duke University?

7 A I'm Visiting Research Scholar at the Social Science
8 Research Institute at Duke, I am a Visiting Professor of
9 Political Science at Duke, and on the graduate faculty in
10 political science at Duke.

11 Q And where did you earn your degrees?

12 A My degrees? Well, my first degree is a bachelor's degree
13 which I received from the University of -- excuse me -- from
14 Hope College in Holland, Michigan. I majored in political
15 science there. Then I have a master's -- so that was in '68 I
16 graduated. Sorry. Then I received a master's degree from the
17 University of Kentucky in political science in 1969 and a
18 Ph.D. in political science from the University of Kentucky in
19 1971.

20 Q And briefly could you describe your previous professional
21 positions?

22 A Well, my first position on the faculty was at the
23 University of New Orleans. I was at the University of New
24 Orleans for, I think, about 36 years. I left the University
25 of New Orleans after Katrina and the flood. Then I went to

1 University of North Carolina Law School as a staff member in
2 the Center for Civil Rights, not a lawyer, but as, like, an
3 in-house social scientist. And since then I've been at Duke.

4 I've had positions abroad over that time frame. I've
5 had two Fulbright professorships or -- yeah, fellowships. I
6 was a Fulbright professor at National Taiwan University and
7 National Chengchi University there. That's C-h-e-n-c-h-i, if
8 I remember correctly. And also a position at Academia Sinica
9 in, I believe it was, the Institute for American Studies
10 something like that. And Sinica is S-I-N-E-C-A, I believe.

11 Q Along with your --

12 A Oh, excuse me. And I've been --

13 THE COURT: He's not done.

14 A I've been -- sometimes I forget these titles, but I've
15 been, I think, a Senior Research Fellow at the Institute for
16 Irish Studies at the University of Belfast. I've been some
17 kind of Senior Fellow at the Australian Defense Force Academy.
18 I've had -- let me see, I think I'm missing one, but it no
19 doubt is on my vitae. Academics don't take much off their
20 vitae.

21 Q Dr. Engstrom, what topics do you focus on as a political
22 scientist?

23 A My area of focus is minority politics, especially when it
24 comes to structuring of electoral competition, how it affects
25 minorities.

1 Q Have you taught any courses that related to minority
2 politics and the structure of electoral competitions?

3 A Yes. At Duke I did teach a course called, I think,
4 Voting Rights and Election Systems. It was a senior honors
5 seminar that was an entire course. I know I taught a graduate
6 seminar at the University of New Orleans once dealing with
7 basically the same topic, voting rights and election systems.
8 And I taught seminars in minority politics and urban politics,
9 both of which always had sections on election systems and
10 minorities.

11 Q And have you published peer-reviewed books on the topic?

12 A Well, I'm a co-author of a peer-reviewed book called -- I
13 believe it's *Fair and Effective Representation? Debating*
14 *Minority Rights and Minority Representation*. I'm sorry. I
15 forget the title, but it's on the vitae.

16 Q Have you written any peer-reviewed articles?

17 A Yes. Many.

18 Q Do these articles relate to the way that we structure
19 electoral contests?

20 A Many of them do. Not all of them, but many of them do.
21 It's an area I've been studying for quite a while.

22 Q Approximately how many articles have you written, or over
23 what period of time have you written articles?

24 A Articles on just --

25 Q On electoral structure.

1 A Oh, I don't have the count. My work has been published
2 in social science journals and certainly in political journals
3 and others and also law reviews, but the count would be, I
4 think, pretty high by now.

5 Q Okay. Do you review the academic work of other political
6 scientists for publication?

7 A Yes, I do. I sometimes review book manuscripts, and I've
8 had a lot of experience reviewing articles that are submitted
9 to refereed journals.

10 Q Have you presented your research to your peers?

11 A Oh, yes. I've presented papers on this topic at the
12 America Political Science Review, I think the International
13 Political -- I'm sorry -- the American Political Science
14 Association convention, then the International Political
15 Science Association convention or annual meeting, the Midwest
16 association, the Southern association, the International
17 Conference on Interdisciplinary Social Science. A number.

18 Q And have you been on the board of any professional
19 associations related to your work?

20 A Yes. I've been on the board of the *Journal of Politics*
21 and *Public Administration Quarterly*.

22 Q Have you submitted reports or testified at depositions or
23 in court as an expert in other cases related to the Voting
24 Rights Act?

25 A Yes. Yes. I believe it would be fair to probably say a

1 hundred or more in terms of testifying either by deposition
2 or -- and/or in trial.

3 Q And have you ever been appointed by a court to serve as
4 an expert or a special master in Voting Rights cases?

5 A I've been appointed to serve in both capacities. I was a
6 court-appointed special master for redistricting -- I'm
7 sorry -- court-appointed expert, my apologies, in a case
8 involving the Dallas, Texas, city council.

9 And I served as a special master in a case
10 involving -- well, I forget exactly what the election system
11 was, but it was a Section 2 case involving Chicago Heights,
12 Illinois, one of the early suburbs outside Chicago.

13 Q And in the many times that you've given testimony as an
14 expert in Voting Rights Act cases, have you given testimony
15 for both plaintiffs and defendants in those cases?

16 A Yes.

17 Q Were you accepted by -- as an expert by the courts in all
18 of the cases that you just mentioned, or have you --

19 A Every case I've been to court and testified in, I have
20 been accepted as an expert. I haven't gone to trial and been
21 told I can't testify; so I've been able to -- I mean, I've
22 always been approved or accepted as an expert.

23 MS. EBENSTEIN: Okay. Your Honor, we move to qualify
24 Dr. Richard Engstrom in the fields of electoral systems,
25 minority politics, racial polarization analysis, and

1 statistical methods related to racial polarization analysis.

2 MS. ORMSBY: No objection.

3 THE COURT: You may proceed.

4 Q (BY MS. EBENSTEIN) Briefly, Dr. Engstrom, what were you
5 asked to do in this case?

6 A I was asked to -- I thought I heard someone. I was asked
7 to assess the extent to which, if any, voting in recent
8 elections in the Ferguson-Florissant School District elections
9 was racially polarized.

10 Q And what is racially polarized voting?

11 A Racially polarized voting refers to a consistent
12 relationship between the race of the voter and the way in
13 which the voter votes or, expressed differently, the way in
14 which black voters and other members of the electorate vote
15 differently.

16 Q After performing your analysis, did you form an opinion?

17 A Yes, I have.

18 Q And what is your opinion?

19 A I've looked at five lists, the five most recent
20 elections, all of them involving a biracial candidate pool,
21 meaning a choice between or among African-American and
22 non-African-American candidates, and in each of those five
23 elections I have found racially polarized voting; so I'm
24 convinced that there is racially polarized voting in the
25 school district.

1 Q And did you prepare a report or declaration in this case?

2 A I prepared two: An initial report and a rebuttal report.

3 Q If you can please turn in the binder in front of you to
4 the tab marked 52.

5 A Fifty-two?

6 Q Yep.

7 A Okay.

8 Q Is that the declaration that you prepared?

9 A Yes, it is.

10 Q And does this report state your opinions in this case and
11 the methods and data underlying that opinion?

12 A Yes, it does.

13 Q How do you analyze election results to determine whether
14 elections are racially polarized?

15 A I employ methodology called ecological inference, and we
16 usually refer to in shorthand as "EI." EI is a statistical
17 procedure that -- it's a statistical procedure that was
18 developed by Professor Gary King at Harvard University, whom I
19 consider the preeminent methodologist in the discipline of
20 political science. He developed this methodology because he
21 was dissatisfied with the quality of the estimates that were
22 being produced through the methodologies relied upon by the
23 Supreme Court in *Thornburg v. Gingles*. Those would be
24 ecological regression and homogeneous precinct analyses also
25 referred to as extreme case analysis.

1 THE COURT: He was dissatisfied with the U.S. Supreme
2 Court.

3 THE WITNESS: Sorry?

4 THE COURT: He was unhappy with the U.S. Supreme
5 Court.

6 THE WITNESS: No. He was unhappy with the social
7 science that was going into the -- at the time, that was state
8 of the art.

9 THE COURT: I didn't know if I needed to call Scalia
10 today or, you know. Just checking in.

11 Q Dr. Engstrom, before we go into a discussion of EI, did
12 you perform any other type of analysis to determine whether
13 voting was racially polarized in the Ferguson-Florissant
14 School District?

15 A Well, to determine whether it was racially polarized, I
16 did an analysis using homogenous precincts. And if there's
17 any conflict, I would rely on ecological inference. I think
18 it is by far the superior methodology. But homogeneous
19 precinct is another kind of methodology, and so I sought to
20 show basically what I expected, that the polarization was --
21 you're going to find it whatever methodology you rely on.

22 Q Have you used EI in your peer-reviewed political science
23 publications in the past?

24 A I have included material based -- estimates based on
25 ecological inference, yes.

1 Q And have you used EI in your testimony as an expert
2 witness in Voting Rights Act cases?

3 A Oh, since, I believe, the late 1990s, early 2000s,
4 sometime around in there. I've been using it for a long time
5 and for quite a while now. It's the only methodology I
6 typically use. It's superior to the others.

7 Q And was the late 1990s or early 2000s the time when
8 ecological inference was developed?

9 A Gary King's book came out, I think, around that time.
10 There's a footnote in my report. I could check the date. I'm
11 not sure. But I began using it soon after the software to
12 implement that procedure became available.

13 Q What is ecological inference?

14 A Ecological inference is an estimation procedure. It's
15 used for racially polarized voting analyses, although it's not
16 restricted to that. You can use it for other areas where
17 you're doing what we call "cross-level inference." But in
18 terms of a racially polarized voting analysis, it's a
19 procedure that includes all of the precincts that there are in
20 an election, and it looks at -- it does a comparison in effect
21 of the racial composition of the precinct electorates with
22 using the best available measure we can get for a precinct
23 electorate and the votes cast for the various candidates
24 within those precincts. So it's matching precinct-level data
25 as low as we can go in terms of the votes cast.

1 Q And specifically what information does an EI analysis
2 provide?

3 A What it provides are estimates of group support for
4 different candidates. And when I say "estimates," it provides
5 a point estimate, which is the best estimate in terms of the
6 procedure. That's one number which the procedure says this is
7 our best estimate given the data, given the procedure, and
8 those I report in my declaration.

9 Q What other information does EI provide along with a point
10 estimate?

11 A EI also provides confidence intervals.

12 Q Could you explain what that is.

13 A Yes. A confidence interval -- what I'm reporting in my
14 report as well are 95 percent confidence intervals. Those are
15 intervals around the point estimate in which, statistically
16 anyway, we can be 95 percent confident the true value lies.
17 Now, the true value is what really happened, but like Dr.
18 Kimball said yesterday, I believe it was, or maybe the day
19 before, sorry, but because of the secret ballot we have to
20 estimate. So we're trying to estimate that true value. And
21 the confidence interval says, statistically anyway, in terms
22 of statistical theory, we can be 95 percent confident that
23 that true value falls within that range, all right?

24 Now, the true value -- the best estimate of the true
25 value is the point estimate, but so -- but the confidence

1 interval expands to plus and minus other values, but as you go
2 away from the true -- from the point estimate, excuse me, the
3 probability that that point in the confidence interval is a
4 true value declines as you go toward the ends -- from the
5 middle to the ends of the confidence interval. And I
6 shouldn't have said "middle." I should have just said "from
7 to the point estimate to the ends," because the confidence
8 intervals we rely on are real -- they're the actual confidence
9 intervals, not estimated. I mean, maybe I should explain a
10 little.

11 When we talk about confidence intervals, we are --
12 it's the same as, say, somebody reporting a poll and saying,
13 well, our estimate is 35 percent, but it's plus or minus 3.

14 Well, that's a common way to express it, but that's
15 an estimated confidence interval usually. I mean, if it's --
16 if the confidence interval is symmetrical around the point
17 estimate, that usually means it's done through an estimation
18 procedure.

19 The confidence intervals I report in my declaration,
20 you will notice, are not symmetrical, and that's because they
21 are true confidence intervals. True confidence intervals --
22 they may turn out to be symmetrical, but they are not
23 necessarily symmetrical.

24 Q And is the 95 percent confidence interval the standard
25 that political scientists use while doing EI?

1 A Yes, I believe so.

2 Q Okay. Could you explain statistical significance as it
3 relates to confidence intervals?

4 A Oh, yes. Okay. Basically, if the confidence intervals,
5 say, for the vote for two candidates, if they do not overlap,
6 then you can be -- you can rest assured that the point
7 estimates are statistically significantly different. It's a
8 conservative approach in that it is theoretically possible for
9 confidence intervals to overlap somewhat and still be
10 statistically significantly different, but if they don't
11 overlap, we know they are statistically significantly
12 different.

13 Q And I'd like to turn to your analysis of the
14 Ferguson-Florissant School District elections. I'm going to
15 refer to that as the FFSD elections.

16 A FFSD, okay.

17 Q Which elections did you analyze?

18 A The ones held in 2011, 2012, 2013, 2014, and 2015. The
19 five most recent elections to the school board.

20 Q What data did you rely on to perform your EI analysis of
21 these elections?

22 A Well, the data entailed the votes cast for the different
23 candidates, the various candidates in the precincts, and the
24 voting-age population percentages African American,
25 non-African American in those precincts. Those data were

1 provided to me by Bill Cooper, another expert in this case and
2 who does demography.

3 Q And why did you choose to analyze the 2011 to 2015
4 elections?

5 A Well, they're recent and they're biracial. In other
6 words, they all involve that choice between or among
7 African-American and non-African-American candidates. If I'd
8 have gone back further, I would have had to go to 2006.
9 Everything from 2006 to 2011 is either uncontested, they're
10 uncontested elections, or they don't provide that biracial
11 choice. I believe it's 2009 where all the candidates were
12 white. So I'm interested in biracial elections.

13 Also by going back to -- they're all recent. In
14 *Thornburg v. Gingles*, the Court relied on three elections held
15 over five years. Well, this is five elections held over five
16 years. I think it's a sufficient number of elections to
17 analyze and rely upon.

18 In addition, it was important to go back to 2011, I
19 think, so we could at least get two observations of
20 three-vote, three-seat elections. The school district --
21 sometimes they're two-vote, two-seat elections, and sometimes
22 three-vote, three-seat elections.

23 I thought it was important if we could get that -- at
24 least two observations of three-vote, three-seat elections
25 because those elections, I forget the actual percentage, but

1 they provide -- well, 47 or 48 percent of the seats, I
2 believe, are awarded through three-vote, three-seat elections,
3 and the slight majority of the seats are from two-vote,
4 two-seat elections.

5 Q And did you identify black voters' candidates of choice
6 in the 2011 to 2015 FFSD elections?

7 A Yes, in each one.

8 Q How did you identify black voters' candidates of choice?

9 A I look at cohesion in terms of the black support for
10 candidates. I look at whether there are substantial
11 differences in the support for -- between certain candidates.
12 I look to see if the -- I mean, and that generally would
13 entail looking at the point estimate for a candidate, black
14 vote for a candidate, and seeing if it falls within the
15 confidence interval for another candidate. And then I do
16 employ the statistical significance test in terms of whether
17 the confidence intervals overlap.

18 Q Are black voters required to prefer as many candidates as
19 there are seats up for election in each of these elections?

20 A No voter is required to cast as many votes as there are
21 seats.

22 Q And are black voters --

23 A Or cast all their votes in that sense. They're allocated
24 as many votes as seats. I'm sorry. But they don't have to
25 cast all those votes.

1 Q And are they required to prefer as many candidates as
2 there are seats up for election?

3 A No.

4 Q In these five elections, how do you determine if there
5 was a second- or third-choice candidate of choice among black
6 voters?

7 A I look at whether the other candidates are cohesive. I
8 look at the difference in terms of their vote and the other --
9 like the first preference vote, first preference among the
10 African Americans. I look to see what kind of difference
11 there is in that vote. Looking at that difference again
12 entails whether the candidates' votes -- the estimated
13 African-American vote for the candidate is outside the bounds
14 of the confidence interval for another, say, less-preferred
15 candidate, and again whether there's statistically significant
16 difference.

17 Q What patterns, if any, did you find as to the race of
18 candidates preferred by African-American voters in FFSD
19 elections?

20 A Well, in all the elections I looked at, in all the
21 elections that I analyzed, African Americans' preference, top
22 preference, the candidate that received most -- the most votes
23 from African-American voters was an African-American
24 candidate. No exception. And I understand that exception --
25 there's no exception going back at least as far as 2000. The

1 first preference of African-American voters, I understand, has
2 always been since then an African-American candidate.

3 That's important to me, because if the preference is
4 to be represented by people from within their own group, I
5 don't think the opportunity to elect is an equal opportunity
6 to that of the other voters in the electorate unless that
7 includes -- the opportunity includes, then, to elect from your
8 own group. I believe African Americans have demonstrated
9 their preference to be represented by other African Americans
10 in these school board elections, just looking at the top vote.

11 But then I look at lesser votes, too, and so I
12 identify candidates of the representatives -- I would say
13 representatives of choice in all five of these elections, and
14 in doing so, I name one or more candidates as
15 African-American-preferred representatives.

16 Q And were there patterns, if any, that you found as to the
17 race of the second- or third-preferred candidates who you
18 identified as candidates of choice?

19 A Yes. Actually, they're all black. All the candidates
20 are African Americans that I can identify as being the
21 preferences of African-American voters in these elections.

22 Q And you mentioned earlier on that there was one
23 monoracial election over the time period from 2000 until 2015
24 where there were no black-preferred candidates.

25 A Correct.

1 Q Was the top-choice candidate in that election black or
2 white?

3 A Well, if there's no black candidate, there can't be a
4 preference for a black candidate in an election in which there
5 isn't one.

6 Q Okay. Are you saying, Dr. Engstrom, as a principle, that
7 black voters cannot prefer white candidates?

8 A No. I never said that.

9 Q And can you give me some examples of cases in which you
10 determined that black voters have preferred white candidates?

11 A Sure. One recently -- okay. Yes. Not too long ago I
12 worked in a case involving the Euclid City School Board.
13 Euclid is an area -- is a municipality in a school district
14 outside Cleveland. It's one of the older suburbs in the
15 Cleveland metro area.

16 The school board admitted that their election system
17 was dilutive and violated Section 2. My only role in the case
18 was to participate in the remedial end. And there was a
19 remedial election held under a one-vote limited arrangement.
20 I can explain that if necessary, but it was a one-vote limited
21 arrangement.

22 There was -- well, the United States Justice
23 Department didn't feel like it was a remedy based on that
24 election, and they felt that way because a black candidate
25 that had received about 18 percent of the black vote finished,

1 I don't know, second or third. There were three seats at
2 issue, and they said that, therefore, she should have won
3 because she was in the top two or three for the
4 African-American vote.

5 There was another candidate in that election that got
6 over a majority of the African-American vote. That candidate
7 was white. And I testified that they had a candidate -- they
8 had a representative of choice. It was that white candidate
9 that got 51 percent, I think, of their votes. And that was
10 it. And, happily, the court agreed with me. They said, no,
11 you can't reach down to a candidate that got 18 percent of the
12 vote and say that she necessarily had to be elected. So the
13 court agreed that they got the candidate of their choice.

14 Q Okay. Turning now --

15 A Oh.

16 Q Go ahead.

17 A Well, another one I remember now is I worked a case
18 involving the Chicago City Council a number of years back, and
19 there was, at that time, an alderman by the surname of Bloom.
20 I think his district was somewhere around the University of
21 Chicago. Mr. Bloom was challenged, as I recall, in one
22 election by an African American, and my analysis showed Mr.
23 Bloom got most of the votes cast by African Americans in that
24 election, and I said he was the candidate of choice or
25 preference.

1 Q And was Mr. Bloom also a white candidate?

2 A Mr. Bloom was white. Excuse me. I'm sorry I didn't say
3 that.

4 Q If I can ask you to turn to page 17 of your report in
5 front of you marked as Plaintiffs' Exhibit 52. And we've
6 enlarged a slide of that page on the page.

7 A Page 17?

8 Q Yes. Tab 52, page 17.

9 A It's from my vitae.

10 Q No.

11 A Oh, my apology. The vitae is numbered separately. So,
12 yes, it says Table 1.

13 Q Okay. And does that match the screen in front of you,
14 Table 1 that we have up on the screen?

15 A Yes, it is. Yes, it is.

16 Q And what is shown on this table?

17 A Well, what this table contains are the EI estimates of
18 the votes cast by African Americans that went to each of these
19 candidates in this election. So the middle column is the
20 percent of the African-American votes that were cast, and the
21 right-hand column is the percent of the non-African-American
22 votes that were cast. And it's my understanding that
23 non-African Americans in the school district are
24 overwhelmingly white. So we could say it's a white vote and
25 it could be -- you know, it's a little less awkward, but,

1 technically, it is the non-African-American vote.

2 And then you see every candidate is listed and that
3 the cells contain both the point estimate that I talked about
4 earlier for each candidate and the values -- the range of the
5 95 percent confidence interval for that point estimate for all
6 of the candidates.

7 Q And was this a three-seat election?

8 A This was a three-vote, three-seat election, yes.

9 Q So if each voter cast all of their votes, what's the
10 highest percentage of votes that a candidate could receive?

11 A If every candidate cast three votes, the highest vote any
12 candidate could get would be 33.3 percent.

13 Q Did you identify a candidate or candidates of choice
14 among black voters in the 2011 election based on these EI
15 estimates?

16 A Yes.

17 Q Who was that?

18 A They are Graham and Hawkins.

19 Q And did --

20 A I might note that the black candidates are in bold font
21 in all the tables.

22 Q Dr. Engstrom, you just said, I believe, that you
23 identified Graham and Hawkins. Did either of them win?

24 A No.

25 Q And what is your basis for identifying them as candidates

1 of choice among black voters in the 2011 election?

2 A Well, I think their vote is cohesive. And in determining
3 that I compared that to, well, what we've just said. The most
4 vote any candidate could get if every voter in their group --
5 now we're talking about the two groups. But the greatest vote
6 among African Americans that a candidate could get would be
7 33.3 percent.

8 And these estimates show that, I think, Graham's vote
9 is somewhere above 70 percent of that threshold, and Hawkins'
10 vote is about 65 percent of that threshold. I consider that
11 to be a cohesive vote. These aren't single-vote, single-seat
12 elections; so they don't -- they're not comparable to the
13 estimates that come out of single-vote, single-seat elections
14 because there you know, you know, it's one vote and that means
15 every voter. That means a percentage of voters and the
16 percentage of votes is the same. But in this that's not. So
17 I would consider these point estimates to show cohesion.

18 Q What were Graham and Hawkins' estimated levels of support
19 among white voters?

20 A Only 6.1 and 7.4 percent, respectively, over the two.

21 Q How would you characterize their level of support among
22 white voters?

23 A Minimal.

24 Q So you identified two black-preferred candidates in this
25 three-seat election; is that correct?

1 A That's correct.

2 Q And did you identify a third preferred candidate of
3 African-American voters in this three-seat election?

4 A No, I did not. The third -- the candidate with the third
5 highest percentage of the vote is Clark. His percentage is
6 much lower. I wouldn't consider that a cohesive vote among
7 African Americans for Mr. Clark.

8 I also look and see that the point estimates for both
9 Graham and Hawkins are outside the confidence interval for Mr.
10 Clark. In other words, they -- that's a substantial
11 difference in the vote between those two black candidates and
12 Mr. Clark. And I will also note that the vote for Graham and
13 also the vote for Hawkins are statistically significantly
14 higher among blacks than the vote for Mr. Clark.

15 Q So as an expert on racial polarization, do you consider
16 Clark to be a black-preferred candidate in the 2011 election?

17 A No. There's no cohesive vote for Clark. He may come in
18 third, but that doesn't mean he -- I wouldn't call him a
19 black-preferred candidate. He's so far behind the two leading
20 candidates among black voters.

21 And certainly for purposes of Prong 3 I would not
22 consider -- I would not consider Clark -- well, he didn't win
23 either. So none of the top three won. But the third one I
24 would not consider a candidate of choice of African-American
25 voters. It just got 13.5 percent. That's it.

1 Q Which candidates received the highest levels of support
2 among white voters?

3 A That would be Martinez, P. Morris -- "P" is an initial --
4 and what I'm going to pronounce as Chabot. I could be wrong.

5 Q And were they elected?

6 A All three of them.

7 Q Turning now to page 18, which is also enlarged on your
8 screen, what is shown on that page?

9 A Well, page 18 actually has the results for two elections.

10 Q What's shown on the top of this page?

11 A The 2012 election, which is a two-vote, two-seat
12 election.

13 Q So in this two-vote, two-seat election, if each voter
14 cast all of their votes, what's the highest percentage that a
15 candidate could receive?

16 A If each voter cast two, the highest percentage would be
17 50 percent.

18 Q And did you identify a candidate or candidates of choice
19 among black voters in this election?

20 A Yes. I identified B. Morris, and "B" again is an
21 initial. M-o-r-r-i-s.

22 Q And did B. Morris win?

23 A No.

24 Q What is your basis for identifying her as a candidate of
25 choice among black voters?

1 A Well, she's got 51.9 percent of the vote. It exceeds the
2 threshold. If every voter had cast two votes, I would
3 consider that, in a multi-vote situation like this, to be a
4 cohesive vote among African Americans for Ms. Morris.

5 Q What was B. Morris' estimated level of support among
6 white voters?

7 A Only 12.8.

8 Q How would you characterize B. Morris' level of support
9 among white voters in this election?

10 A I think 12.8 in an election is minimal.

11 Q And as an expert in racially polarized voting, would you
12 say that B. Morris received considerable support from white
13 voters?

14 A From white voters?

15 Q Yes.

16 A No. No. Not at 12.8. That's not considerable.

17 Q What conclusions, if any, do you draw from the level of
18 white support for B. Morris in the 2012 election?

19 A Well, I would say that the white voters vetoed B. Morris,
20 kept her off the city council. If we only counted the black
21 vote, she would win. But when we add in the white vote, you
22 can see that, one, she doesn't win, and she only got 12.8
23 percent estimated of the white vote. Even the top of the
24 confidence interval is 15.6.

25 Q And I believe you accidentally said "city council" a

1 moment ago.

2 A I might have. I'm sorry. FFSD.

3 Q Thank you. Did you identify a second black-preferred
4 candidate of choice among black voters in this two-seat
5 election?

6 A No.

7 Q Who received the second highest estimated level of
8 support among black voters in this election?

9 A Mr. Schroeder.

10 Q Who received the third highest?

11 A Sorry?

12 Q Who received the third highest estimate of support among
13 black voters in this election?

14 A Mr. Ebert, the only other two candidates in the election.

15 Q As an expert in racial polarization, do you consider Mr.
16 Schroeder a representative of choice among black voters?

17 A No. Mr. Schroeder is not -- Ms. Morris exceeds the 50
18 percent threshold, and Mr. Schroeder does not. He's not --
19 he's basically just about halfway there.

20 In addition, if we compare -- if we look at Morris'
21 vote and compare it to Schroeder's, her 51.9 is way outside
22 the confidence interval for the estimate for Schroeder.
23 That's 29.9.

24 In addition, her vote and Schroeder's vote you can
25 see the confidence differences -- confidence intervals do not

1 overlap, which means the black vote for Schroeder is
2 statistically significantly lower than that for Morris.

3 Q And in this particular two-seat, three-candidate
4 election, did black voters express a particular preference
5 between Schroeder and Ebert?

6 A Well, statistically, one could say it's pretty much a
7 tie, but Schroeder did get 1.9 percentage points more in terms
8 of the estimate.

9 Q Why, if at all, is it problematic to call Mr. --

10 A I say statistically significantly a tie because the
11 confidence intervals do overlap extensively.

12 Q Why, if at all, is it problematic to call Schroeder a
13 candidate of choice among black voters when the top-preferred
14 candidate of choice lost?

15 A Well, if you call Schroeder -- or Schroeder [different
16 pronunciation] -- I'm sorry.

17 Q Schroeder.

18 A If you call Schroeder a candidate of choice, then you'd
19 also say for Prong 3 purposes that's a win for African
20 Americans, when their choice is Morris and Morris did not win.
21 So I don't think you would cancel out the loss faced by
22 African-American voters for Morris by saying, oh, but they got
23 Schroeder. No. And I think courts agree with me on that.

24 Q And which candidates had the highest level of support
25 among white voters?

1 A Ebert.

2 Q Who was the second candidate among white voters?

3 A Schroeder.

4 Q And were they elected?

5 A Both of them were elected.

6 Q Turning now to the bottom of the page.

7 A Middle of the page?

8 Q I'm looking at the screen; so on the page for me. But,
9 yes, the bottom of the page.

10 A I apologize.

11 Q What is that in the middle of the page?

12 A That's the 2013 election, which was also a two-vote,
13 two-seat election.

14 Q So, once again, if each voter cast all of their votes,
15 what's the highest percentage of votes that a candidate could
16 receive in this election?

17 A Fifty percent.

18 Q Did you identify black voters' candidate or candidates of
19 choice in this election?

20 A Yes.

21 Q And who did you identify?

22 A Henson.

23 Q Did he win?

24 A No.

25 Q What is your basis for identifying Mr. Henson as the

1 candidate of choice among black voters?

2 A Well, Henson's vote -- his percentage among African
3 Americans is estimated to be 43.7 percent. I believe that is
4 probably over 80 percent of the threshold I'm using for
5 comparative purposes of what would happen if -- I mean how
6 many can you get if all voters cast their two votes? So I
7 think that is cohesive support among African Americans for
8 Henson.

9 Q What was his estimated level of support among white
10 voters?

11 A 17.0.

12 Q How would you characterize his level of support among
13 white voters?

14 A Small.

15 Q And as an expert in racially polarized voting, would you
16 say that Henson received considerable support from white
17 voters?

18 A At 17.0 percent? Absolutely not.

19 Q Did you identify a second black-preferred candidate in
20 this two-seat election?

21 A No, I did not.

22 Q Who received the second highest estimated level of
23 support among black voters?

24 A Ms. Hogshead.

25 Q And again as an expert on racial polarization, why don't

1 you consider Ms. Hogshead a black-preferred candidate in 2013?

2 A Well, you can see that she is considerably below Henson.
3 Her vote is estimated to be 24.2. That -- to me, it would not
4 be a cohesive vote in a two-vote, two-seat election. In
5 addition, Henson's estimate at 43.7 is again quite a ways
6 beyond her confidence interval, much higher. And I would also
7 note that given the confidence intervals Henson's vote is
8 statistically significantly higher than Hogshead's vote.
9 She's statistically significantly below.

10 So I don't think that qualifies her as a
11 representative choice of African-American voters. She simply
12 came in second in the African-American vote.

13 Q And why, if at all, would it be problematic to call
14 Hogshead's victory in this election a win for black voters
15 when you have not identified her as a candidate of choice?

16 A Sure. Same as Schroeder. I mean, what that would mean
17 if you said she was a candidate of choice, then you would, in
18 effect, be canceling out Henson's loss.

19 And for Prong 3 purposes, I don't think that's
20 appropriate. I mean, they lost their preference. And to say
21 that while she replaces Henson I don't think is an appropriate
22 way to view this.

23 Q Which candidates had the highest estimated level of
24 support among white voters in this election?

25 A Both Hogshead and Brown.

1 Q And were they elected?

2 A Both were elected.

3 Q Turning now to the next page, page 19, of your report.
4 What is shown on that page?

5 A Well, at the top of the page, the 2014 election is
6 reported. This is a three-vote, three-seat election. This is
7 the second observation of a three-vote, three-seat election.
8 The table is designed just like the others we've talked about.

9 Q Just so we clear, "like the others," if each voter cast
10 all of their votes, what's the highest percentage of votes
11 that a candidate could receive?

12 A 33.3 percent.

13 Q Did you identify a candidate or candidates of choice
14 among black voters in the 2014 election based on your EI
15 estimates?

16 A Yes, I do.

17 Q And who are they?

18 A Paulette-Thurman. That's a surname. Sorry. Paulette,
19 dash, Thurman. Savala and Johnson. All three, I would say,
20 are representatives of choice of African-American voters.

21 Q Did they win?

22 A Only Paulette-Thurman. Savala was defeated. Johnson was
23 defeated.

24 Q What is your basis for identifying all three as
25 candidates of choice among black voters in this election?

1 A Because all of these -- I think their point estimates are
2 sufficiently close to that 33.3 threshold to say that African
3 Americans gave cohesive support to these three candidates.
4 Indeed if you look at their votes combined, it's like 75
5 percent of their votes go to just these three candidates in a
6 nine-candidate election. I think that's cohesive. So I would
7 say that they were the candidates of choice.

8 Q Were there any close contests for the second- or
9 third-preferred candidate among black voters?

10 A I mean, Johnson has the lowest of the three, which is
11 24.5. The next highest percentage is down to 8.6. So no
12 one's -- I don't think there's another candidate of choice in
13 this election.

14 Q As an expert on racially polarized voting, do you believe
15 there was a lack of cohesion among African-American voters in
16 the 2014 election?

17 A No.

18 Q If you could just tell us why not.

19 A Well, I think each -- they cohesively supported each of
20 those three candidates I've identified, all right? And as I
21 said, if you add them together, that's 75 percent of the votes
22 in a nine-candidate contest. That's cohesion. I don't see
23 how you could describe it as anything else.

24 Q Looking to how white voters behaved in the 2014 election,
25 what were the estimated levels of support among white voters

1 for these three candidates in 2014?

2 A All three of those candidates I've identified as
3 representatives of choice for African-American voters received
4 less than 10 percent of crossover votes: Paulette-Thurman 8.4
5 percent; Savala 7.0 percent; Johnson 2.8 percent.

6 Q And how would you characterize their levels of support
7 among white voters in this election?

8 A Minimal, minimal, minimal.

9 Q And what conclusions, if any, do you draw from the level
10 of white support for the three black-preferred candidates that
11 you've identified in 2014?

12 A Well, Paulette Johnson was -- excuse me.
13 Paulette-Thurman was able to be elected, but Savala and
14 Johnson were vetoed by the white voters.

15 Q Which candidates had the highest level of support among
16 white voters in 2014?

17 A Chabot, P. Morris -- again, that's an initial -- and
18 Benz.

19 Q Okay. I believe you may have said a moment ago that
20 there were nine candidates running in this election.

21 A Eight. I'm sorry. Eight.

22 Q That's all right. I just want the record to be clear.

23 A It's eight, yes. But that wouldn't change my opinion,
24 eight versus nine.

25 Q And you just named the three candidates with the highest

1 level of support among white voters. If you can tell me among
2 all eight candidates running for the school board in 2014,
3 which candidate received the lowest level of support among
4 black voters?

5 A P. Morris.

6 Q And who was elected in 2014?

7 A Chabot, P. Morris, and Benz.

8 Q Looking now to the bottom, middle bottom of that page.

9 A I'll accept bottom.

10 Q That qualifies. What is shown on this part of the page?

11 A This is the 2015 election, the last election that's been
12 held in the Ferguson-Florissant School District. So this
13 again is a two-vote now, two-seat election, and the table is
14 structured the same as the others.

15 Q And, once again, if each candidate cast all their votes,
16 what's the highest percent of votes that a candidate could
17 receive?

18 A Fifty percent.

19 Q Did you identify a candidate or candidates of choice
20 among black voters in the 2015 election?

21 A Yes. I identified one candidate as a black-preferred
22 representative, and that is Graves. Ms. Graves, I believe.

23 Q And what is your basis for identifying her as a
24 black-preferred representative among black voters in this
25 election?

1 A I think their vote was cohesive in support of Ms. Graves.
2 As you can see, it's 52.4 percent is the estimate, and that
3 exceeds the 50 percent threshold. I would say that's doing
4 pretty good among African Americans.

5 Q Did you identify a second candidate of choice among black
6 voters in this election?

7 A No, I did not.

8 Q And why do you identify only one black-preferred
9 candidate in the 2015 election?

10 A Well, let's go to the next highest in terms of percent of
11 votes among black -- cast by blacks. That would be Ms.
12 Dameron who received an estimated 14.5 percent of their votes.
13 That's all, 14.5 percent. I think the difference between that
14 and 52.5 is large. The point estimate for Graves is way
15 outside the confidence interval for Dameron, and the
16 confidence intervals definitely do not overlap. There is
17 quite a distance between them.

18 I don't think Dameron is in any way comparable -- I
19 mean, that you could call her a representative of choice or
20 even a candidate of choice simply because she gets the second
21 highest percent, but only at 14.5.

22 Q And what was Ms. Graves' estimated level of support among
23 white voters in 2015?

24 A 21.4.

25 Q Which candidate had the highest level of support among

1 white voters in 2015?

2 A Ebert.

3 Q And was he elected?

4 A Yes, he was.

5 Q What was his estimated level of support among black
6 voters in 2015?

7 A 9.8.

8 Q What was the lowest level -- was that the lowest level of
9 support among black voters between any of the five candidates
10 in 2015?

11 A Was that the lowest --

12 Q Yes.

13 A -- among black voters? Yes.

14 Q Yet he was elected?

15 A Yes, he was elected.

16 Q What, if any, observations do you have about the 2015
17 election when a black-preferred candidate was successful along
18 with a white-preferred candidate?

19 A Well, the 2015 election is a -- what's called a
20 post-litigation election. The election occurred after this
21 case was filed. Post-litigation elections, we've been told by
22 courts and by the Supreme Court, are something that judges
23 have to be cautious about and that -- well, I think it's fair
24 to say that this could be some skepticism about whether that's
25 a one-off advantage that was -- that occurred for a minority

1 candidate or whether this represents is typical of elections.

2 So this was a post-litigation election. It did --
3 it's the only two-vote election that's in my five years, in
4 five elections, it's the only one in which an African American
5 has been elected. She is -- as I said, I think she got
6 cohesive support from African-American voters.

7 But post-litigation elections can entail changes in
8 candidate pools, changes in voting behavior. These are things
9 that are looked at in terms of whether these post-litigation
10 elections can be considered like normal in terms of what's
11 going on in the jurisdiction or if there's something
12 aberrational about it.

13 In this election I'd say there's something
14 aberrational. This is the only two-seat, two-vote election in
15 which there was only one major white candidate.

16 Q Could you explain why you believe this is the only
17 two-seat election where there was only one major white
18 candidate?

19 A Well, in all the others -- we can go back to page, I
20 believe -- well, it would be 18. And you can see Ebert and
21 Schroeder were both far from minor candidates in terms of
22 their competitive status in the election. The same thing is
23 true of Hogshead and Brown. So both of those two-seat
24 elections -- two-vote, two-seat elections had two major, I
25 would consider, major white candidates certainly in terms of

1 the kind of electoral support they received.

2 When we get to 2015, the -- no. The second black --
3 excuse me. The second white candidate after the winner,
4 Ebert, as I said, got 14.5 percent of the black vote and only
5 9.9 percent of the white vote. Now, that is minimal white
6 vote in effect. And I don't think that's the same anywhere
7 near what Ebert and Schroeder and Hogshead and Brown received.
8 So this is an election in which the second white candidate --
9 I would consider a minor candidate, certainly not a
10 competitive candidate, and these numbers would indicate she
11 wasn't competitive among African Americans or whites.

12 The reason I point that out is that functions in
13 effect like leaving a second seat open for an African-American
14 candidate. Now, this came after the litigation was filed.
15 It's a serious difference from what happened in previous
16 two-vote, two-seat elections. And I think it could be
17 considered -- the future will see -- as a one-off advantage
18 that Ms. Graves received because there wasn't a second major
19 white candidate in this contest.

20 Q And if you were going to characterize it, how significant
21 was the departure in this election from patterns in previous
22 elections that you analyzed?

23 A In this case or in others?

24 Q In this case.

25 A In this case? Well, it's a serious departure. I mean,

1 you have two candidates very competitive for the white vote in
2 2012 and in 2013. That doesn't happen in the post-litigation
3 election. All of a sudden there's only one serious white
4 candidate in terms of competitive status.

5 Q And just to summarize, based on your analysis once again,
6 did you form an opinion as to whether voting is racially
7 polarized in the FFSD elections?

8 A In all of them --

9 Q And if you can supplement --

10 A -- that I have analyzed, in all five of those most recent
11 elections.

12 Q And if you can summarize, what is that opinion?

13 A That voting is racially polarized in each one and
14 therefore in the jurisdiction itself when it comes to voting
15 for school board members.

16 Q You've gone through each election and identified eight
17 candidates of choice of black voters in the past five
18 elections?

19 A I have.

20 Q What percentage or how many of those candidates were
21 unsuccessful?

22 A I think 75 percent. I think I've identified eight,
23 including Ms. Graves in 2015. Only -- well, six of them were
24 defeated; so that would be, I believe, 75 percent. Correct me
25 if I'm wrong.

1 Q I think you're correct. Have you read Dr. Rodden's
2 report?

3 THE COURT: If you got six over eight wrong, we need
4 to start over.

5 Q Have you read Dr. Rodden's report in this case?

6 A I've read two reports by Dr. Rodden, an initial one and
7 a -- well, he calls it a supplement, but it's basically a
8 rebuttal to my report.

9 Q And are those contained behind Tab A and Tab B in the
10 binder in front of you?

11 A Tab A is labeled "Report of Jonathan Rodden, Ph.D." Tab
12 B is labeled "Supplemental Report of Jonathan Rodden, Ph.D."
13 "Bloc Voting and Cohesion" is the title.

14 Q And in front of you at Plaintiffs' Exhibit 53, the second
15 tab -- or did you prepare a declaration in rebuttal to Dr.
16 Rodden's report?

17 A To his first report, not his supplemental or rebuttal
18 report.

19 Q Is that your rebuttal declaration in front of you, behind
20 Tab 53?

21 A Yes, it is.

22 Q And is your reasoning set forth in this rebuttal
23 declaration?

24 A Sorry?

25 Q Is your reasoning contained in this rebuttal declaration?

1 A Okay. I'm sorry.

2 Q Is your opinion contained in your rebuttal declaration?

3 A Yes, it is.

4 Q Your rebuttal declaration responds to a few issues that
5 defendants' expert raised. First, Dr. Rodden claims in his
6 rebuttal paragraph 10 that you have, quote, "adopted the view
7 that a white candidate cannot qualify as 'preferred' by
8 African-American voters." Have you adopted that view?

9 A Never.

10 Q And how would you respond to Dr. Rodden's claim?

11 A Well, that's not true. I've never done that. I didn't
12 do that in this case, and I've never done that in a previous
13 case.

14 Q So in this report or ever in your 40 years working as an
15 expert on voting rights, have you ever made the assertion that
16 white voters cannot -- sorry -- that white candidates cannot
17 qualify as a black-preferred candidate?

18 A Never.

19 Q Again in Dr. Rodden's rebuttal paragraph 8, he states
20 that instead of following the logic of the Supreme Court in
21 *Gingles*, you, quote, "assume that minorities can only truly
22 prefer candidates who are themselves minorities." And he
23 gives as an example that, according to your approach, it's --
24 you claim that it's impossible for black voters to have
25 preferred Hogshead in 2013, quote, "because she is white."

1 Have you ever taken this position?

2 A No. That is again not true. And I have never -- I
3 haven't said that in this case, and I haven't said that in any
4 previous case or in my writings. I do note in my writings
5 that African Americans show a -- certainly demonstrate a
6 preference for within-group representation. That happens --
7 it's happened here, and it happens all over, but not that a
8 white can't be representative of African Americans. I
9 identified that person in Euclid. I've identified the person
10 in Chicago. Certainly, frankly, I think I could represent
11 African Americans, but I don't think I would be their
12 preference.

13 Q You never know.

14 A I'm sorry.

15 Q Did you -- just to be clear, did you determine that Ms.
16 Hogshead was not a black-preferred candidate because it's
17 impossible for voters to have preferred her because she is
18 white?

19 A That is absolutely not true.

20 Q Okay.

21 A And I'd like to know why he says it.

22 Q Second, Dr. Rodden states that you made an analytic
23 decision that has to do with uncontested elections, in that he
24 said you chose to focus only on races in which
25 African-American incumbents drew challengers. Why didn't you

1 perform racially polarized analysis of uncontested elections?

2 A Why did I not perform? Because there's no election, it's
3 uncontested, that's not even on the ballot in FFSD elections.
4 There's nothing to analyze. And so how do we -- we can't
5 assess voter preferences in uncontested elections.

6 Q So just to be clear, could someone perform racially
7 polarized voting analysis when no votes were cast and no
8 election took place?

9 A I'm not aware of who that person could be. No. I'd say
10 no.

11 Q Third, Dr. Rodden claims in paragraph 5 of his rebuttal
12 report that you make the, quote, "jarring assertion that any
13 victory of a white candidate constitutes a white veto of
14 African-American preferences." Do you in this report, or have
15 you ever in your 40 years as an expert --

16 A I don't say that in this report. I don't -- have never
17 said that. And I would love to know why he says that.

18 Q And, finally, Dr. Rodden claims in his rebuttal that, by
19 your logic, perfect cohesion would have entailed 100 percent
20 of the African-American votes for Ms. Morris, the only
21 African-American candidate running for a two-seat election.
22 He's referring to 2012.

23 Would black voters, in order to be cohesive, need to
24 cast 100 percent of their votes for a black-preferred
25 candidate? For instance, B. Morris in 2012?

1 A Well, the only way they could cast 100 percent of their
2 votes is to not cast 50 percent of their franchise. They have
3 two votes in the election. If you're going to get -- one
4 candidate is going to get 100 percent, that would entail
5 everybody -- basically all the African Americans single-shot
6 voting, in other words voting for one candidate, withholding
7 their votes for the other.

8 If that's the way you have to win an election in the
9 Ferguson-Florissant School District, then I would certainly
10 say that that's not an opportunity equal to that of other
11 members of the electorate, because they don't have to
12 single-shot vote in order to elect a candidate of their
13 preference.

14 Q And so just to be clear, are black voters required to
15 give up 50 percent of their votes in order to show cohesion
16 behind a particular candidate?

17 A Well, I would hope not. Are they required to? The only
18 way you can get 100 percent is to withhold your other votes so
19 no other candidate receives one. Now, that's not -- I mean,
20 that's a voluntary act, but what it represents is -- if that's
21 the way -- if that's what you have to do to win, then, as I
22 said, I don't see how anyone could say the opportunity in this
23 jurisdiction is equal.

24 Q And you've reviewed Dr. Rodden's report. Does he at any
25 point suggest in his report that white voters should be

1 required to single-shot vote or give up their second or third
2 vote to elect their candidate of choice?

3 A Well, I don't know about required, but I do believe his
4 report, in effect, says, if only they single-shot voted more,
5 they might have won seats.

6 Q Are you referring --

7 A And I think there's a suggestion that that's what they
8 should do. I don't hear that suggestion -- well, I don't hear
9 any -- I haven't read or heard any claim by Dr. Rodden in his
10 report or in his deposition that says white voters need to
11 single-shot vote or that white voters have succeeded in
12 electing candidates because of single-shot voting. There's no
13 allegation that white voters single shot, and yet they will
14 elect their candidates of choice all the time.

15 Q So does the possibility of single-shot voting in any way
16 undermine your opinion that FFSD elections are racially
17 polarized?

18 A No. The ability to single shot? No. I mean,
19 polarization is one thing. The opportunity is another.

20 MS. EBENSTEIN: Okay. If you could just give me a
21 moment to consult with my --

22 THE COURT: Certainly.

23 MS. EBENSTEIN: That's all the questions that I have
24 for you at this point, Dr. Rodden. Thank you very much.

25 THE COURT: Okay. My instinct is to go ahead and

1 take a 20-minute recess at this time so cross-examination is
2 integrated rather than broken up. So we will take a recess.
3 We'll reconvene at approximately 10:40. Thank you.

4 **(COURT RECESSED FROM 10:20 AM UNTIL 10:47 AM.)**

5 THE COURT: Are you ready?

6 Remind you, sir, you're still under oath.

7 You may proceed.

8 **CROSS-EXAMINATION**

9 **BY MS. ORMSBY:**

10 Q Good morning, Dr. Engstrom. How are you?

11 A I'm fine. Good morning.

12 Q I'm Cindy Ormsby. We've met before.

13 A At a deposition.

14 Q Yes, we did. Are you familiar with *Gingles* III?

15 A Yes.

16 Q And wouldn't you agree that under *Gingles* III there's a
17 precondition that there has to be a white majority?

18 A No.

19 MS. EBENSTEIN: Objection, Your Honor. Calls for a
20 legal opinion.

21 THE COURT: You can rephrase it.

22 Q *Gingles* III says -- and I'm going to quote from the
23 *Gingles* case -- "In establishing this last circumstance, the
24 minority group demonstrates that submergence in a white
25 multi-member district impedes its ability to elect its chosen

1 representatives."

2 Is that what you understand the case to say as well?

3 A Well, I think that was a fact situation in North
4 Carolina. They were white-majority multi-member districts.

5 Q So wouldn't the flip side of that also be true?
6 Wouldn't -- doesn't racially polarized voting require a white
7 majority of the voting-age population?

8 A Absolutely not.

9 Q Why not?

10 A You can have racially polarized voting with a black
11 majority, white majority. It can be -- it's not specific in
12 terms of what the majority is. It's the way people vote and
13 how differently they vote.

14 Q In your analysis you told us you analyzed five elections,
15 correct?

16 A Correct.

17 Q Yesterday Dr. Kimball -- were you here for Dr. Kimball's
18 testimony yesterday?

19 A Not yesterday. I was here on Tuesday.

20 Q I don't remember if he said it Tuesday or yesterday. My
21 days are kind of starting to all go together. But he
22 indicated that he had analyzed three, three-year terms to
23 allow the board to have turned over three times. So he went
24 back to 2004. Do you think that that's a good process to use?

25 A No. I think if you go back to 2004, I think you're

1 talking about what are referred to as generally stale
2 elections. This is 2016. We want to know what's going on
3 now. So it's a contemporary examination. I wouldn't go back
4 to 2004.

5 Q So you went back to 2011?

6 A I did.

7 Q And you just testified that you believed 2015 was a
8 special condition?

9 A I think there are special circumstances. You know, the
10 impact of that is for the judge to decide. But, yes, I think
11 it's post-litigation. It is aberrant fact situation in a way
12 that I think could have created a one-time advantage for an
13 African-American candidate to be elected. I do believe those
14 things, yes.

15 Q Is that the only election that you consider special
16 circumstances applied or could have applied?

17 A It's the only one, yes.

18 Q So in reality you're asking the judge to really look at
19 only four elections?

20 A No. The judge is free to look at the fifth election as
21 well. I think the Supreme Court has told him to be cautious
22 about a post-litigation election. And I would add, as a
23 witness, I think that's appropriate in this case to be
24 cautious about it. It may not carry equal weight with the
25 others. That's sometimes the way they handle post-litigation

1 cases, post-litigation situations.

2 Q So it's your belief that Dr. Graves might not have been
3 elected absent the filing of this lawsuit?

4 A Well, might not? I don't see how I can disagree that she
5 might not have.

6 Q Are you aware or did you look at the number of votes that
7 African-American candidates received in 2014 and 2015, total
8 number that African-American candidates received in those two
9 years?

10 A I believe I've seen them, but I don't recall what they
11 are.

12 Q Can we pull up 2014 election results. This is
13 Plaintiffs' Exhibit 11. It's been admitted into evidence.
14 Can we get a better view of that.

15 So the black candidates in 2014 were LaWanda Wallace,
16 F. Willis Johnson, Donna Paulette-Thurman, James Savala, and
17 Larry Thomas. Do we agree?

18 A I believe that's the case, yes.

19 Q And if we add up all those votes, would you agree with me
20 that those five African-American candidates received more
21 votes than the three caucasian candidates?

22 A I have never added them up, but I have no reason to
23 disagree with what you're telling me.

24 Q So can you explain to me how if African-American
25 candidates in total received more votes than the white

1 candidates, how did the white voters block African Americans
2 from electing their candidates?

3 A They blocked two of the African Americans because their
4 crossover vote was so minimal that it resulted in vetoing
5 those two candidates.

6 Q Would you agree with me if they would have voted more
7 cohesively for the three highest vote-receiving
8 African-American candidates, that more of them, more
9 African-American candidates, would have been elected that
10 year?

11 A Well, again, I don't think I can disagree with that.
12 You're not specifying any numbers or anything, but it's
13 possible that, if they were more cohesive, they would. Now, I
14 think they already were cohesive, and I think the crossover
15 vote was minimal. So I think there's more room for growth in
16 terms of support for black candidates within the white
17 electorate than within the African-American electorate.
18 You're asking that they be even more cohesive. I think
19 they're sufficiently cohesive.

20 Q But you would agree with me if they were more cohesive,
21 three African-American candidates would have been elected that
22 year?

23 A Well, if the increase in cohesion was high enough to
24 elect three, yes, you're -- you're saying if they voted more,
25 they could have elected. I can't disagree with that

1 statement. It's a "what if" statement.

2 Q Let's turn to the 2015 election. In 2015 the
3 African-American candidates were Roger Hines, Michael Person,
4 and Courtney Michelle Graves. Do you agree with me?

5 A I believe that's the case, yes.

6 Q And, again, if you add up all the votes given to
7 African-American candidates, they exceed the number of votes
8 received by caucasian candidates.

9 A Well, I've never added them up; so, I mean . . .

10 Q Did you --

11 A I have no reason to disagree with you about that.

12 Q And would you agree again that if African Americans would
13 have voted more cohesively, Roger Hines likely would have been
14 elected?

15 A Well, yes. Again, it's a "what if" statement. If it had
16 been different, it would have been different. I'm not
17 interested in "what if." I'm interested in what actually
18 happened. Again, I would point to the very small crossover
19 vote.

20 Q Do you know how many votes in 2014 Mr. Savala was short
21 from beating Mr. Morris?

22 A I don't know off the top of my head, no.

23 Q Let me go back to 2014, please. Did you bring a
24 calculator up there with you?

25 A I did.

1 Q Could you please use your calculator to deduct the number
2 of votes Mr. Savala received from the number of votes that Mr.
3 Morris received?

4 A Okay. Okay. Do you want me to subtract Savala's vote
5 from Morris' vote? Is that correct?

6 Q Correct. 2,516 minus 2,425.

7 A I get 91 votes.

8 Q So if Mr. Savala would have received a mere 92 more votes
9 in 2014, he'd be sitting on the board right now; is that
10 correct?

11 A If the election had -- voting behavior had been
12 different, the outcome could have been different, that's true.
13 I don't know about the others, but, yes, there's a 91-vote
14 margin between the two.

15 Q And we know already that more votes were given to
16 African-American candidates than white candidates. So if just
17 some of those votes that went to the two other African
18 American -- to LaWanda Wallace or to Larry Thomas, would have
19 made a difference in Mr. Savala's campaign. Do you agree?

20 A If the votes they received exceed 91, then I believe that
21 that would be the case.

22 Q Can you tell me what evidence you have that the filing of
23 this lawsuit had anything to do with Dr. Graves being elected?

24 A Had to do with -- well, this is my testimony, and that is
25 that the candidate pool was significantly different than in

1 previous two-vote elections.

2 Q I heard your testimony. I'm wondering what evidence you
3 have that the candidate pool was actually influenced because
4 of this lawsuit.

5 A Oh, I don't know if there was a direct manipulation of it
6 or not. It's my understanding you don't have to have
7 smoking-gun intent evidence for courts to say this is a
8 special circumstance, it's unusual, and it taints the
9 selection's probative value. But I haven't done a study --

10 Q So you --

11 A -- of who may have talked to them, tried to encourage
12 candidates, why there's all of a sudden only one major white
13 candidate. And I'm not sure that it's a kind of thing I could
14 get honest answers about.

15 Q Did you look to see how often this case was cited in the
16 press in the St. Louis area?

17 A No.

18 Q So you believe that circumstantial evidence -- that there
19 is circumstantial evidence that a white candidate ran and got
20 more votes than African Americans; that Ms. Dameron ran in
21 order to -- I don't know. What are you saying about Ms.
22 Dameron? What is your point?

23 A I think you'll have to -- well, I don't know what your
24 question was.

25 Q You know what --

1 THE COURT: I don't think there was one.

2 Q Let me try again. You believe the fact that this lawsuit
3 was filed could have caused a phenomenon in which whites felt
4 that Dr. Graves was one of the two best candidates.

5 A I think that could have happened.

6 Q Are you able to provide any peer-reviewed political
7 science literature that finds that the filing of a VRA
8 litigation case causes voters to elect certain candidates
9 because they are against a single-member district electoral
10 system?

11 A No. And if I were doing the study, that isn't what I
12 would ask anyway. Voters react to candidate pools. So I
13 think the critical thing here was a candidate pool that had
14 only one white major competitive candidate, unprecedented in
15 the other -- well, not present in the two other two-vote,
16 two-seat elections that I've examined.

17 Now, what could have happened? I forget what your
18 question is. I'm sorry.

19 Q My question was is there any peer-reviewed material that
20 supports that contention?

21 A Well, that voters react in a way -- voters that don't
22 want single-member districts react --

23 Q Will vote for a --

24 A Because of the litigation?

25 Q Right.

1 A Oh, I'm not aware of a study that has done that. I'm
2 not. I don't know of one.

3 Q So if this case was not in the press but was not well
4 known, I'm still just confused on how it could have affected
5 the candidate pool, as you keep saying. How could it have?

6 A Well, something affected the candidate pool because it
7 was different.

8 Q How is it different again?

9 A It's different in that in 2015 there's only one
10 competitive white candidate in a two-seat election. So if
11 there's only one white competitive candidate, that improves
12 the chances of an African-American candidate being elected to
13 one of the two seats.

14 Q In the elections that you reviewed, you found an election
15 where there was a noncompetitive African-American candidate,
16 didn't you?

17 A Oh, I'm sure I did.

18 Q Did you point that out to the Court that that was
19 significant in any way?

20 A I don't see it as having been anything that affected the
21 outcome of the election. There was no need to point -- I
22 mean, there are minor -- when you have eight candidates or six
23 candidates or something, you're bound to find some that don't
24 poll with the voters very well.

25 Q I'm trying to understand why it's important for us to

1 figure out why a candidate pool is what it is after litigation
2 is filed but we don't -- or you don't mention the political
3 atmosphere or the specific events that are going on in 2011
4 specifically that could also have affected a candidate pool.

5 A Yes, but they weren't post-litigation elections.

6 Q So --

7 A And in the three, the first three, no African American
8 was elected. In the fourth one was one. I didn't say that
9 that was special circumstances at the 2014, but in 2015 it
10 certainly is circumstantial evidence that something went on.
11 Why? I don't know why. I don't know that anybody would be
12 able to assess why. Like I said, people may not even give
13 honest answers to interviews when it comes to something like
14 that.

15 So it's not -- I don't believe the precedents require
16 that kind of smoking gun. It's open to the judge to look at
17 circumstantial evidence. The judge will decide how probative
18 the election is. He may feel it's equally probative to the
19 four previous. He may feel it's less probative to -- to
20 opportunities to elect in the school district.

21 Q Okay. When you look at African-American-preferred
22 candidates, you decided that if the most-preferred candidate
23 is African American and loses and the lesser-preferred
24 candidates of African Americans is white, that you don't count
25 the winning preferred white candidate as a preferred

1 representative. Is that right?

2 A The same would be true of if it was a lesser preferred
3 black candidate. What I'm saying is they didn't get the level
4 of support from African Americans.

5 Q But you --

6 A And they were substantially lower, statistically
7 significantly lower; it could have been a black candidate or a
8 white candidate.

9 Q But you agree that every voter has two or sometimes three
10 votes. They have two or three choices in each election?

11 A These elections are either two-vote, two-seat or
12 three-vote, three-seat.

13 Q And you find that to be true even if there are other
14 African Americans in the race who receive less votes than the
15 white candidate?

16 A If there are other African American --

17 Q Yeah.

18 A -- less votes than the white candidate who is also far
19 behind a preferred black candidate?

20 Q Yes. Yes.

21 A Well, I'm not sure that that candidate would even finish
22 in the top two or three. If they're behind both the black
23 candidate that's most preferred by blacks, a white candidate
24 that's lesser preferred by blacks, and if that black candidate
25 gets even less black vote, I don't see that -- if it's a

1 two-vote election, it wouldn't have any consequence in that
2 sense. If it's a three-vote, then there could be a question
3 of whether the third black candidate was a candidate of
4 choice. But if I decide that the second-place candidate was
5 not a candidate of choice, then certainly the third-place
6 candidate is not going to be either.

7 Q But you'll agree with me in the five elections that you
8 analyzed, you failed to identify a white candidate as
9 African-American preferred even when only one African American
10 was running. Is that right?

11 A Well, I'm not going to say I failed to. I'm going to say
12 I didn't. I don't think there's any failure in that.

13 Q So --

14 A There weren't.

15 Q So aren't you simply throwing out the seats in which
16 African Americans failed to vote cohesively?

17 A Well, if they don't vote cohesively, then they're not a
18 candidate of choice. They're not a representative of choice.

19 Q Do you give any credence to the possibility that an
20 African-American-preferred candidate who loses sometimes by
21 less than 100 votes could be because of ineffectual
22 campaigning, voter anger at incumbents, or just simple bad
23 luck?

24 A There you go. What you're asking me is "what if?" What
25 if they ran a bad campaign? What if they had bad luck?

1 That's not what -- well, I don't know what happened. I
2 analyzed the elections as they occurred and the votes cast as
3 they were. And a "what if" statement doesn't tell me that
4 what I say about the election is inaccurate. A "what if"
5 statement is simply like a hypothetical that says, well, what
6 if they got more cohesion? What if they did more single-shot
7 voting?

8 Q Or what if they --

9 A Then couldn't they win? Yes, they could win, and they
10 might win anyway, but that's not what happened.

11 Q Or what if they didn't talk on a cell phone during a
12 candidate forum? Or what if they didn't -- what if they
13 filled out the League of Women Voters' questionnaire that got
14 put in the *Post*? Aren't all those things factors as well?

15 A We're not doing a causal analysis. We're looking at the
16 preferences of two groups of voters. We're not asking why.
17 That's not part of Prongs 2 or 3 of *Thornburg*. We're asking
18 how did they vote? Was it different? Did it affect the
19 outcome? And that's the analysis.

20 Now, if we want to project something into, you know,
21 that it had been different or into the future or whatever,
22 that's different, but "what if" statements are not going to
23 tell me that my analysis is incorrect in terms of what
24 happened in casting the votes.

25 Q You don't consider the fact that there's crossover voting

1 in five -- in the five elections that you analyzed?

2 A Crossover voting by whom? For whom?

3 Q Whites for black and blacks for whites.

4 A Well, there's some. There's not zero.

5 Q Do you include that into your analysis?

6 A Yes. I include the amount of crossover when a black
7 candidate -- excuse me -- when any candidate would have been
8 the preference of black voters.

9 Q But you don't --

10 A And that candidate, yeah, therefore would have won a
11 seat, but the white vote for that candidate is so low that
12 they didn't win the seat. That's relevant to me.

13 Q You don't take into consideration that white voters may
14 have voted for an African-American candidate simply because
15 they feel that he or she was the best candidate?

16 A As I said, my analysis is not a causal analysis. I don't
17 investigate why voters vote the way they do. I ask how did
18 they vote, not why did they vote that way. But are there
19 differences in their candidate preferences? That's the proper
20 analysis for Prongs 2 and 3 of *Thornburg v. Gingles*.

21 Q Unless it's --

22 A The courts are clear those are not causal inquiries.

23 Q Unless it's an election that takes place after a VRA
24 lawsuit is filed?

25 A What's the question?

1 Q Unless -- you don't look at causal effects unless it's an
2 election that takes place after a VRA lawsuit is filed?

3 A Well, certainly I look at circumstantial evidence of
4 conditions. Those are special circumstances that the Court --
5 Supreme Court even, looks -- says special circumstances, one
6 of which is a post-litigation election, should give pause or
7 create caution in terms of the probative value of that
8 election.

9 Now, in terms of special circumstances, you know, you
10 can say that I am looking at some causal thing in terms of
11 outcome, but that's not Prongs 2 or 3. Prongs 2 and 3 are not
12 causal analysis.

13 Q Did you find crossover voting to be significant in any of
14 the elections that you reviewed?

15 A I didn't -- I wouldn't say that crossover voting among
16 whites was significant. I believe the highest level of
17 crossover voting by whites for a black candidate was the 21
18 percent crossover -- that's my estimate -- that occurred in
19 the 2015 election. It was the highest crossover in all five
20 elections.

21 Q Is it your opinion that in the Ferguson-Florissant School
22 District single-member districts are better than at-large
23 elections?

24 A Better for what purpose?

25 Q For whatever purpose.

1 A Well, I think they will provide the African-American
2 minority in the FFSD with a closer-to-equal opportunity to
3 elect the candidates of their choice. Maybe equal. I haven't
4 seen the single-member district illustrations. I don't know
5 what they entail other than that there are majority
6 African-American districts.

7 So, yes, I think it would provide a more equal
8 competitive context for African-American voters to be able to
9 elect candidates of their choice. I do believe that.

10 Q You've written that at-large elections are beneficial to
11 the largest groups in some of your professional writings,
12 haven't you?

13 A Yes.

14 Q Is it your belief that the VRA specifically requires that
15 minorities have the opportunity to elect their chosen
16 candidate?

17 A I believe the concern is the opportunity provided, not
18 the results obtained. The opportunity that is provided.

19 Q Not to be able to actually elect but have the opportunity
20 to elect?

21 A Well, it's the opportunity, I believe, that the law
22 focuses on.

23 Q Did you author an article entitled *Cumulative and Limited*
24 *Voting: Minority Electoral Opportunities and More?*

25 A Yes. In the *St. Louis University Public Law Review*, I

1 did.

2 Q That's right. I'd like for you to look on your screen.

3 Is that the first page of your article? It's Defendants'

4 Exhibit NN that's been stipulated to.

5 A It appears to me to be the first page of my article.

6 Q Do you know what year this was published?

7 A 2010? Was that it? I'm sorry. I'm not sure about that.

8 Q I think you're correct when you say 2010.

9 A Okay. All right.

10 Q On page 101 of this article -- and I don't want the Court
11 to think it's that long of an article. It was just in the
12 middle of a journal. About halfway down --

13 THE COURT: I'll read a hundred pages if I have to.
14 It's okay.

15 Q About halfway down the first paragraph, under "Minority
16 Electoral Opportunities," that's the Roman numeral, will you
17 read the sentence that begins "There are numerous" -- and we
18 blew it up for you so you could read it.

19 A Oh. I see where the sentence "There are numerous"
20 begins.

21 Q Yes. Yes.

22 A So I'm going to read there to the end of the paragraph?

23 Q Right.

24 A "There are numerous variations in how at-large elections
25 are implemented, but regardless of the particular arrangement,

1 this system does have a tendency to favor the candidates
2 preferred by a majority group, or at least the largest group,
3 of voters within the jurisdiction. It provides the largest
4 group of voters an opportunity to determine the winners of all
5 of the seats."

6 Q So if African Americans are a majority or even a
7 plurality of the voting-age population, wouldn't at-large
8 elections be better for African Americans?

9 A The voting-age population is not equivalent to voters.

10 Q Did you do any analysis as to African-American turnout in
11 the five elections that you analyzed?

12 A No.

13 Q Did you co-author an article entitled *The*
14 *Underrepresentation of Blacks on City Councils: Comparing the*
15 *Structural and Socioeconomic Explanations for South/Non-South*
16 *Differences*?

17 A I did co-author an article with that title, yes.

18 Q Your Honor, this is Defendants' Exhibit 00, which has
19 been stipulated to.

20 And I've put the first page up on the screen for you
21 to identify it as your article.

22 A Yes, that's my article.

23 THE COURT: Your co-author was Michael McDonald? He
24 was a musician from Florissant.

25 MS. ORMSBY: That's right.

1 THE WITNESS: This Michael McDonald has never been
2 mistaken for him.

3 THE COURT: Okay. All right.

4 Q (BY MS. ORMSBY) Do you know where this was published?

5 A Where it's published? The *Journal of Politics*.

6 Q And do you know when? Do you know when?

7 A I'm going to guess 1982.

8 Q Your memory is excellent. It was 1982. Now, in this
9 paper if the city had an African-American population over 50
10 percent, you threw them out of the study, didn't you?

11 A I believe so.

12 Q Why is that?

13 A Because we were looking at cities that were minority
14 African American.

15 Q Don't you actually state because if a African-American
16 population is over 50 percent, that that specification
17 assumes -- because you wanted to be able to assume minority
18 status that if it's over -- let me say that again.

19 Let me refer you to your article. I've highlighted
20 the section that I want you to look at. On page 1093 to 1094,
21 could you read the highlighted section, please?

22 A Yes. It begins "Due to data on black median income not
23 being reported for 15 cities, all of which have less than 1
24 percent black population, and our decision to eliminate the
25 four central cities in which the blacks constitute a majority

1 of the population, the theoretical specification assumes
2 minority status, the following analysis is based on central
3 cities in 224 SMSAs."

4 Q What does that stand for, SMSA? What does SMSA stand
5 for?

6 A Standard metropolitan statistical area.

7 Q Thank you. The conclusion of this article -- correct me
8 if I'm wrong -- is that at-large elections tend to dilute the
9 votes of minorities; is that correct?

10 A I think that's correct. I'm not sure about the nuances
11 in it. I mean, it's also South/non-South comparisons, which
12 can make a difference in that sense.

13 Q Would you agree with me that in the Ferguson-Florissant
14 School District whites are the minority of the population?

15 A I have no basis to agree with you on that.

16 Q You didn't look at census data to determine whether or
17 not whites were the minority population, total population in
18 the district?

19 A Well, I did not myself look.

20 Q Okay. That's fine.

21 A I understand it's a disputed issue.

22 Q I'm talking about total population. I'm not talking
23 about voter-age population.

24 A Okay. I don't know.

25 Q Okay.

1 A I don't know what that figure is.

2 Q All right. Okay. Finally, does your ecological
3 inference analysis rely on the 2010 decennial census or on the
4 2011-2013 ACS?

5 A The independent variable is based on the 2010 census of
6 population.

7 Q Have you been involved in any cases in which you used and
8 relied upon the ACS?

9 A Me?

10 Q Yes.

11 A Probably those cases I discuss in the *St. Louis*
12 *University Public Law Review* because we calculate what's
13 called a "threshold of exclusion," and we want to see what
14 that -- what the figure would be within the city compared to
15 that. So it may have been that I took more recent data for
16 citywide figures, not for lower-level figures, but citywide
17 figures.

18 Q Were you an expert in *Benavidez v. City of Irving*?

19 A Yes, I was.

20 Q Didn't the court in that case rely on the ACS holding
21 that the Census Bureau considered ACS data reliable and
22 intends for it to be relied upon in decisions such as Voting
23 Rights Act compliance?

24 A I did not participate in that portion of the case; so
25 actually I don't remember what the Court had to say about it.

1 Q Why do you choose to rely on the 2010 decennial census
2 rather than the 2011-2013 ACS?

3 A Because it's a complete enumeration, and we were dealing
4 with the -- my reliance on that concerned precinct
5 configurations, and when you get down to the precinct level,
6 the ACS has lots of errors in it. Obviously, the lower the
7 level of geography, the less accurate the small samples are.

8 So we chose -- or I chose -- well, I relied upon, and
9 I had no problem relying upon the 2010 census figures, because
10 they are counts. We know there are errors in the counts, but
11 they are counts, not an estimate, and certainly not an
12 estimate based on very small numbers.

13 So when it comes to precinct-level data, I'm fine
14 with relying on the closest census. And certainly it was very
15 close to 2011, 2012, 2013, and then '14 or '15 are getting
16 into the mid-decade period.

17 Q You would agree, though, that in this case the Court
18 would need the most recent data available so that we can look
19 at what the situation is as close to the present?

20 A The Court would need it?

21 Q Yes.

22 A Well, I think it would depend on the purpose. As I said,
23 the 2010 census was used to calculate the racial composition
24 of precincts, and at that level of geography the ACS has, as I
25 understand it, large confidence intervals in effect. It's not

1 very precise.

2 Q And --

3 A As you go up in geography, the confidence intervals get
4 smaller. I am not an authority on the ACS, I will admit that,
5 but that's why I'm fine with using their 2010 census for the
6 RPV, racially polarized voting, analysis.

7 Q I would -- well, isn't it true that relying on the census
8 is important when you're drawing -- when you're redistricting,
9 when you're drawing, you know, borders and guidelines, because
10 the law requires us to rely on the 2010 census for that
11 information? Would you agree with that? Or do you know about
12 that? And if you don't know, that's fine.

13 A Well, redistricting has been done based on total
14 population in almost all instances.

15 Q Uh-huh.

16 A Now, I think the census would have the voting-age
17 population figures as well because in the Voting Rights
18 situation then there's a second analysis beyond population
19 equality of whether there's dilution in the vote. But the
20 latest census is generally what is used, and it would be the
21 most recent, and in almost all circumstances it has been total
22 population.

23 Q Do you agree with me that a Voting Rights Act case in
24 which the minority voting-age population and the white
25 voting-age population are roughly identical, as they are in

1 this case, is unusual?

2 A Well, it's a fact circumstance that is unusual, and so I
3 would think it would be unusual in terms of Voting Rights
4 cases.

5 MS. ORMSBY: I don't have any further questions.

6 Well, wait a minute. I better check with my colleagues first.

7 **(OFF THE RECORD.)**

8 Q (BY MS. ORMSBY) Dr. Engstrom, you were deposed on August
9 18, 2015, correct?

10 A I believe it was in August. I was deposed in this case,
11 that's correct.

12 Q You were under oath at the time that you gave your
13 deposition?

14 A I was.

15 Q Just as you are today. I'll refer to page 93, line 24.
16 I'm just going to read a few lines.

17 I asked you -- question. "Well, would you agree that
18 a VRA case in which the minority VAP and the white VAP are
19 roughly identical is rather unusual?"

20 And your response was, "Well, yes. I think 'unusual'
21 would be an appropriate term."

22 Do you remember giving --

23 A I think that's what I just testified to.

24 Q I just needed to verify it.

25 THE COURT: You are correct. You just said that.

1 MS. ORMSBY: All right. Thank you. I don't have
2 anything else.

3 THE COURT: Any redirect?

4 MS. EBENSTEIN: Yes, Your Honor.

5 THE COURT: Are you ready?

6 MS. ORMSBY: Yes.

7 THE COURT: You may proceed.

8 **REDIRECT EXAMINATION**

9 **BY MS. EBENSTEIN:**

10 Q Dr. Engstrom, turning for a moment to the 2011 election
11 results. And that is on page 17 of your report.

12 A I'm there.

13 Q How many white candidates ran in that election?

14 A Seven.

15 Q And did you at any point in your report suggest that the
16 white residents of FFSD would have to coordinate to decide who
17 should run and how many people should run for office?

18 A No. I don't think I expressed any opinion on that.

19 Q And could you again repeat for us who are the white
20 candidates, the three white candidates, that received the
21 highest estimated level of support in that election?

22 A Martinez, P. Morris, Chabot.

23 Q And were they successful?

24 A All three of them were successful.

25 Q They were successful despite the fact that there were

1 seven white candidates running in the 2011 election?

2 A They were.

3 Q If you could turn for a moment to 2014. That is on page
4 19 of your report.

5 A I'm there.

6 Q Were black candidates in that election required to
7 coordinate as the entire population of the black residents of
8 FFSD to decide which candidates should run and which should
9 not run for office?

10 A Were they required to do that? I don't know of any
11 source that would say you must do that.

12 Q And do the --

13 A The answer would be no, you know.

14 Q Did the three black-preferred candidates win in that
15 election as the three white-preferred candidates won in 2011?

16 A Did the three black candidates win?

17 Q Yes.

18 A No. Only one.

19 Q Turning now to the EI estimates for 2015. Did you at any
20 point claim that Mr. Hines, who you estimate received 12.3
21 percent of black voters' votes -- did you at any point claim
22 that he was a black-preferred candidate?

23 A Well, let me -- my numbers is 14.5 percent.

24 Q That's for Ms. Dameron, who is white. For Mr. Hines, who
25 is black and received 12.3 percent of the vote, did you at any

1 time claim --

2 A I may -- I'm sorry. That's the homogeneous portion. My
3 apologies.

4 Q That's okay.

5 A Hines did -- my estimate is 12.3 percent of the votes
6 cast by African Americans.

7 Q Based on that estimate and your earlier testimony, did
8 you at any point claim that Hines was a black-preferred
9 candidate or a candidate preferred among black voters?

10 A No. Sorry. No.

11 Q So is it relevant how many more votes he could have
12 received if, as opposing counsel asked you, things were
13 different in a number of different ways?

14 A Is it relevant how many more?

15 Q Sure. If he had received a ton more votes because of
16 entirely different circumstances than what occurred, having
17 not identified him as a black-preferred candidate, would that
18 change your estimation of how many black-preferred candidates
19 won?

20 A If he had received more votes and if he had won? Is that
21 what the question is?

22 Q Sorry I'm not being very clear. You testified a moment
23 ago that you did not identify Hines as a black-preferred
24 candidate.

25 A I did not. That's correct.

1 Q If he had magically won, would that somehow be a victory
2 for black-preferred candidates since he is not a
3 black-preferred candidate?

4 A If he somehow had won with 12.3 percent of the vote?
5 Black votes?

6 Q Magically won, having not identified him as a
7 black-preferred candidate, would his victory be a victory for
8 a black-preferred candidate?

9 MS. ORMSBY: I'm going to object as to leading, Your
10 Honor.

11 THE COURT: Overruled. I mean, we're working with
12 magic beans now; so we'll just --

13 MS. EBENSTEIN: I would say the same magic that
14 opposing counsel was --

15 THE COURT: I understand. I overruled the objection.

16 Q (BY MS. EBENSTEIN) Okay.

17 A Okay. So if getting 12.3 percent of the vote he would
18 have won, well, in that instance I'd have to assume that he
19 got much higher white vote than he did in order to win.

20 Q Okay.

21 A So under the hypothetical he could have been a black
22 candidate preferred by white voters. It's possible.

23 Q Turning to your article *Cumulative and Limited* --

24 THE COURT: Hang on a second. I assume it's possible
25 if what you experience here, because you could never know for

1 sure was the one vote voting, the bullet voting, the
2 single-shot voting as you referred to it. You could not
3 necessarily register high on either end, but the numbers -- a
4 lower number could still prevail if all the votes were going
5 in one place. Do you follow me?

6 THE WITNESS: Well --

7 THE COURT: Is that possible?

8 THE WITNESS: What would happen under single-shot --
9 with single-shot voting what would be happening is -- this is
10 what I assume you're asking me -- is that the percentage of
11 the vote would stay the same in the sense that you can't get
12 more than one vote, but your relative position among the
13 candidates in the total vote could be better because you
14 withheld all your votes from all the competing candidates.

15 THE COURT: Go ahead. I'm sorry to interrupt.

16 Q Turning now to Exhibit NN, your article entitled
17 *Cumulative and Limited Voting: Minority Electoral*
18 *Opportunities and More.*

19 A Do I have it in here?

20 Q No. We need it on the screen. Exhibit NN. Page 101
21 that we just looked at.

22 A That's on my screen, yes.

23 Q Coming up. Was this -- judging from the title *Cumulative*
24 *and Limited Voting* -- an article about cumulative and limited
25 voting to potential remedies in Voting Rights Act violations?

1 A Yes.

2 Q And I believe you pointed out a moment ago, but just to
3 highlight, in that sentence that defense counsel read
4 regarding at-large elections, do you say in there that a
5 particular system has a tendency to favor candidates
6 preferred, or do you say that it always favors candidates
7 preferred?

8 A I believe it says "tends to."

9 Q And as you said earlier, does that statement apply to
10 voters within the district or the voting-age population within
11 the district, as you --

12 A It refers to the group that constitutes the largest
13 number of people casting ballots.

14 Q Okay.

15 A Voters, not voting-age population.

16 Q Turning to Defendants' Exhibit 00, and if we could pull
17 up page -- I'm sorry. Going back to the last article
18 *Cumulative and Limited Voting*. And back to page 101. In the
19 first sentence in the following paragraph, does that start
20 "Minority groups protected by the Voting Rights Act"?

21 A Of the subsequent paragraph?

22 Q Yes.

23 A That's the way it begins.

24 Q Okay.

25 A Yes.

1 Q Thank you. Sorry, Michael. Back to Defendants' Exhibit
2 00. And turning to page 1093 that we had up before, do I
3 understand correctly -- first of all, could you repeat when
4 this article was published?

5 A I think it was -- now I'm drawing a blank.

6 Q I will give you a hint.

7 A 1982, I believe.

8 Q Yes, 1982, as it says on the top right of the page. And
9 in my --

10 THE COURT: It was during Reagan's first term. I'll
11 forgive you for --

12 Q And on page 1094 of this article, do I understand
13 correctly that you're setting the theoretical specifications
14 of the article to exclude both four central cities -- sorry --
15 15 cities with less than 1 percent black population and four
16 central cities, as defense counsel described? Does that mean
17 that this article says or does not say one thing one way or
18 the other about those two groups that are excluded from the
19 study?

20 A Well, they're excluded. It doesn't -- the analysis does
21 not include them. So it wouldn't say anything about them.

22 Q With regard to the case *Benavidez* that you were asked
23 about, did you determine the numbers with which you -- the
24 numbers that you worked with to perform a racially polarized
25 voting analysis, or did another expert decide how to classify

1 voters?

2 A Well, another expert did it, and he's an expert in
3 Spanish surname matching.

4 Q Do you recall exactly how he matched voters to determine
5 if they were part of the CVAP, the citizen voting-age
6 population, and were Latino?

7 A Well, I don't know about CVAP. These were the -- based
8 on the names of the people that signed in to vote in the
9 particular election. So it doesn't deal with census data.
10 And Davey Lee was the person that did the Spanish surname
11 matching, and he provided me with the results of his Spanish
12 surname match. Now, the identification of Spanish surnames --
13 I believe he uses United States Census classification of
14 Spanish surnames. That's my memory anyway.

15 Q But you didn't classify voters as Latino or non-Latino?
16 Somebody else performed that analysis?

17 A Yes. People with Spanish surnames were classified as
18 Latinos, and people that didn't have Spanish surnames were
19 classified as non-Latinos.

20 Q And defendants' counsel asked you if you recalled
21 particular parts of that decision. Do you recall that the
22 court relied on your use of EI and your racially polarized
23 voting analysis in this case?

24 A Yes. Both would be true, EI and my conclusion about
25 racially polarized voting.

1 Q Do you recall whether the court relied only on elections
2 in which voters had a choice between Hispanic and non-Hispanic
3 candidates?

4 A I believe that was the case, yes. That's the kind of
5 elections I analyze, and I think he relied on that; so, yes,
6 they all would have been providing a choice between or among
7 at least one Latino and at least one non-Latino candidate.

8 Q Do you recall that the court noted and approved your
9 testimony that low minority turnout does not militate against
10 a finding of a Section 2 violation?

11 A I believe that is the case.

12 Q Do you recall whether in reliance on your testimony the
13 Court determined that *Gingles* II was satisfied based on your
14 RPV analysis of three elections?

15 A Well, yes. We won the case; so I'm sure he found all
16 three *Gingles* preconditions to be present.

17 Q And do you recall whether or not in reliance on your
18 testimony the court determined that *Gingles* III was satisfied?

19 A Same answer as to *Gingles* II: Yes. He ruled in favor of
20 us, which means he found racially polarized voting. That's a
21 prerequisite to going forward.

22 MS. EBENSTEIN: If I can have a moment, Your Honor,
23 to consult with my co-counsel.

24 THE COURT: Sure.

25 MS. EBENSTEIN: These are all the questions that I

1 have.

2 THE COURT: All right. Thank you very much. Thank
3 you, sir. You may step down. Who's your next -- you're going
4 to call Mr. Redditt? Who's your next witness?

5 MS. EBENSTEIN: Mr. Redditt Hudson.

6 THE COURT: How long will it --

7 MS. EBENSTEIN: Forty-five minutes to an hour.

8 THE COURT: We're going to take a quick five-minute
9 break. We'll come back -- and I mean 11:45, and we'll at
10 least try to get your direct in, and we'll go from there. All
11 right. I have a guilty plea at 12:30-ish. So the only issue
12 there is it's not like someone in custody, you know. But just
13 push all your stuff to one end of the table so the U.S.
14 Attorney and the defendant can do their business. It's not
15 someone that you're going to have to move to the back of the
16 room to be safe or anything.

17 **(COURT RECESSED FROM 11:40 AM UNTIL 11:50 AM.)**

18 THE COURT: Call your next witness, please.

19 MS. EBENSTEIN: Your Honor, plaintiffs call Mr.
20 Redditt Hudson to the stand.

21 THE COURT: If you would step forward, sir, and be
22 sworn.

23 **(WITNESS SWORN BY THE CLERK.)**

24 THE COURT: Are you ready?

25 MS. ORMSBY: Yes, Your Honor.

1 THE COURT: You may proceed.

2 REDDITT HUDSON,

3 HAVING BEEN FIRST DULY SWORN, WAS EXAMINED AND TESTIFIED AS
4 FOLLOWS:

5 DIRECT EXAMINATION

6 BY MS. EBENSTEIN:

7 Q Good morning.

8 A Good morning.

9 Q Would you please state your name for the record?

10 A My name is Redditt Hudson.

11 Q And you have in front of you a binder with a tab marked
12 Plaintiffs' Exhibit 117. Could you turn to that, please?

13 A I see it.

14 Q Do you recognize this document?

15 A Yes, I do.

16 Q And what is it?

17 A It's my declaration.

18 Q Did you sign the declaration under oath?

19 A Yes, I did.

20 Q And did you read it before you signed it?

21 A Yes, I did.

22 Q Have you recently had the opportunity to review each of
23 the statements in this declaration?

24 A Yes, I have.

25 Q And are each of the statements in your declaration true?

1 A Yes, they are.

2 Q Mr. Hudson, where do you live?

3 A I live in Florissant.

4 Q And what is your address?

5 A 2250 Derhake Road.

6 Q How long have you lived in the St. Louis area?

7 A I've lived in St. Louis all my life.

8 Q Did you attend school in the St. Louis area?

9 A Yes, I did.

10 Q Where did you attend school?

11 A I went to the University City schools.

12 Q Which schools specifically did you attend?

13 A I went to Pershing Elementary School. Then I went to
14 Brittany Woods Middle School. Then I went to Hanley Junior
15 High School. Then I went to University City Senior High
16 School.

17 Q And did you attend college?

18 A I did.

19 Q Where did you go to college?

20 THE COURT: In St. Louis all we need to know is where
21 he went to high school. You know that.

22 A And I started to say the "Almighty University City High
23 School," but I held back. I went to St. Louis University here
24 in St. Louis.

25 Q And --

1 A Proud former Billiken.

2 Q What did you study at St. Louis University?

3 A I was a communications major.

4 Q When did you move to Florissant?

5 A Eighteen years ago.

6 Q And do you live within the Ferguson-Florissant School
7 District?

8 A Yes, I do.

9 Q Will you understand me to mean the Ferguson-Florissant
10 School District if I call it "the district" or "FFSD"?

11 A Yes, I will.

12 Q Are you familiar with the Ferguson-Florissant School
13 Board?

14 A Yes, I am.

15 Q And how did you become familiar with it?

16 A Well, when me and my wife moved to the district, we took
17 it upon ourselves to become familiar with who was in charge in
18 the school district that our kids were going to be educated
19 in.

20 Q And how many children do you have?

21 A Two at Ferguson-Florissant schools.

22 Q Your daughters currently attend the Ferguson-Florissant
23 schools?

24 A Yes, they do.

25 Q Which schools have they attended?

1 A They started -- I'm sorry.

2 Q Go ahead.

3 A They started at Commons Lane Elementary School, and they
4 both went to Cross Keys Middle School, and now they're both
5 students at McCluer North High School.

6 Q And have you attended school board meetings at any point
7 since your daughters have been students in the district?

8 A Yes, I have.

9 Q Mr. Hudson, what is your occupation?

10 A I'm a social justice advocate. I've worked for a number
11 of organizations in that capacity.

12 Q And can you briefly describe your employment history?

13 A Well, interestingly enough, I started out as a St. Louis
14 metropolitan police officer here in St. Louis, and I was there
15 from 1994 to 1999.

16 Q Where did you work after you left?

17 A I went to an organization called Better Family Life,
18 which is a public service organization is the best I would
19 describe it, with a particular focus on bringing resources
20 into the African-American community.

21 Q And what was your position at Better Family Life when you
22 worked there?

23 A I was a job developer.

24 Q When, if you recall, did you leave Better Family Life
25 organization?

1 A I believe it's 2004.

2 Q And what did you do after you left Better Family Life
3 organization?

4 A I cofounded an organization, interestingly enough, with a
5 young man who was a former prisoner and gang member, and me
6 being a former police officer, we put together an organization
7 called Project PEACE.

8 Q Does Project PEACE -- did Project PEACE have an
9 organizational mission?

10 A Yes, it did. Our specific focus was gang violence
11 prevention and intervention, particularly in educational
12 settings.

13 Q And when did you leave Project PEACE?

14 A 2005.

15 Q Where did you work after you left Project PEACE?

16 A I went to work for the ACLU of Eastern Missouri as a
17 racial justice project manager.

18 Q From -- during which years?

19 A 2005 to 2012.

20 Q And where did you work after you left the ACLU?

21 A I was hired by the NAACP, the national NAACP.

22 Q And what is the mission of the NAACP?

23 A To ensure the equality of rights of everyone and to
24 eliminate race-based discrimination in a variety of settings.

25 Q Are you also are a member of the NAACP?

1 A Yes, I am.

2 Q And does that mean that you're a member of the Missouri
3 State Conference of the NAACP?

4 A Yes, it does.

5 Q Is the NAACP a partisan organization?

6 A No, it is not.

7 Q What type of organization is it?

8 A It's an organization that is not for profit.

9 Q And does the mission that you described -- ensuring the
10 equality of rights -- include the equality of rights in voting
11 and political rights?

12 A Absolutely.

13 Q What is your current position with the NAACP?

14 A I'm the regional field organizer for Region IV of the
15 NAACP.

16 Q And what are your responsibilities in your position as
17 the regional field organizer?

18 A Well, as a regional field organizer, I have ten states,
19 and my responsibility is to ensure that the NAACP branches or
20 units in all of those states are effectively executing the
21 mission of the organization.

22 Q Does that include executing their mission as it relates
23 to the equality of rights in voting and in elections?

24 A Yes.

25 Q What sort of activities do you undertake on behalf of the

1 NAACP that relate to voting in elections?

2 A Well, working with the units and branches, we do voter
3 education, voter registration, "get out the vote" efforts,
4 phone banking. We work with other organizations
5 collaboratively to do the same. We stay pretty busy with
6 that.

7 Q You mentioned that voter registration is one of your
8 initiatives through the NAACP. Why is voter registration an
9 important initiative for the NAACP?

10 A Because historically in many black communities voter
11 registration has been low, and there's always an issue for us,
12 and the relationship between voter turnout and registered
13 voters is obvious. So the more registered voters we have, the
14 more vote we can turn out or help turn out.

15 Q And what do you think -- why -- what leads you to believe
16 that voter registration rates are historically low in the
17 African-American community?

18 A My own experience, the information that we have available
19 as an organization. Those things are pretty much on the
20 record, I think. That's, to my knowledge, common knowledge.

21 Q What are some -- why is voter registration lower? What
22 are some of those reasons, if you know?

23 A Well, you have a number of things that impact African
24 Americans when it comes to voter registration. There's a
25 transient population generally in many municipalities, not

1 just in St. Louis or in Missouri but around the country.
2 Those trends kind of run the same. There's sometimes
3 difficulties obtaining some of the things that you need to
4 properly register to vote. And there are just a number of
5 hurdles sometimes in front of black voters when it comes to
6 registering to vote.

7 And not to -- I'm sorry. I just don't want to --
8 there's also an issue relative to disenfranchisement, felon
9 disenfranchisement, that significantly impacts African
10 Americans' ability to vote and/or feel like they can register
11 to vote.

12 Q And you said that the work you just described takes place
13 in Missouri as one of the ten states; is that correct?

14 A Yes.

15 Q When do you undertake these voting-related activities?

16 A This is year round.

17 Q Does that include leading up to both the April and
18 November elections?

19 A Yes.

20 Q Are you involved in other community service organizations
21 or activities personally?

22 A I am. Yes.

23 Q Which organizations?

24 A I'm a member of the Omega Psi Phi fraternity, which is a
25 community service fraternity. I'm a cofounder and member of

1 National Coalition of Law Enforcement Officers for Justice
2 Reform and Accountability. I'm also the board chair of the
3 Ethics Project, which is based here in St. Louis. And from, I
4 want to say, 2006 to 2008, maybe Counsel Rothert can correct
5 me, but I was a member of the U.S. Attorney's Hate Crimes Task
6 Force here in St. Louis.

7 Q What sort of work do the U.S. Attorney's Hate Crimes Task
8 Force take on?

9 A We focused on hate crimes and particularly race-based or
10 religion-based hate crimes that took place in the region and
11 efforts to educate the public around the circumstances that
12 create environments where hate crimes can take place and
13 prevention as well.

14 Q And this may seem obvious based upon your experience, but
15 do you keep up on current events as part of your work?

16 A Absolutely. I mean, my news feed is where I spend a lot
17 of time relative to current events.

18 Q What are some of the news organizations that you read or
19 refer to, to keep up on current events?

20 A Oh, *New York Times*, *Washington Post*, *The Guardian*. The
21 *Huffington Post* has a host of publications that are directly
22 concerned with current events and issues. Vox.com is another
23 one.

24 Q If you will excuse me for a moment I'm going to get some
25 water. Thank you.

1 Mr. Hudson, do you vote?

2 A I do.

3 Q And is voting important to you?

4 A Yes, it is.

5 Q Could you please explain briefly why voting is important
6 to you?

7 A Well, in my family and in my community we have a deeply
8 engrained sense and reverence and respect for the sacrifices
9 that were made in order for us to have the right to vote --
10 the lives that were lost, the blood that was shed, the laws
11 that were passed. We have a deeply engrained sense of
12 responsibility when it comes to exercising our right to vote.

13 Q Which elections do you vote in?

14 A All of them: Primary, general -- all of them.

15 Q Do you vote in April local or municipal elections and
16 November general elections?

17 A I do.

18 Q And do you vote in Ferguson-Florissant School District
19 School Board elections?

20 A I do. Yes, I do.

21 Q Is voting in local elections important to you?

22 A Yes, it is.

23 Q And why is voting in local elections important?

24 A I think voting in local elections may be more important
25 than voting in general elections because your local

1 elections -- the results of those elections are going to have
2 the most immediate and direct impact on your quality of life
3 relative to anything from education, taxes, employment,
4 housing. That is where your vote really has an immediate
5 impact. So it's very important to me to vote in local
6 elections.

7 Q Mr. Hudson, have you run for elected office?

8 A I have.

9 Q And when did you run for office?

10 A I ran for the Missouri State Senate, State Senate
11 District 13 in 2012, and I ran for the Forest Park Community
12 College Board of Trustees, I believe, in 2014.

13 Q And why did you run for public office?

14 A I wanted to give our community a voice where I felt that
15 it had been absent and that our interests had not been
16 consistently represented in Jefferson City in particular, and
17 I sought the opportunity to do that. The same thing with the
18 Ferguson -- I'm sorry -- with the Forest Park Community
19 College Board of Trustees.

20 Q When you say "our community" --

21 A I mean the African-American community. I'm sorry.

22 Q Did you undertake a campaign when you ran for office?

23 A I did.

24 Q What sort of activities did you undertake as part of your
25 campaigns?

1 A All of the standard stuff. We canvassed and knocked on
2 doors. We tried to do some fund-raising, phone banking,
3 attempts to get out the vote.

4 Q Do you think you had strong support in African-American
5 communities when you ran for office?

6 A Yes, I do.

7 Q And were you successful in your 2012 state senate
8 campaign?

9 A No, I was not.

10 Q Who was successful?

11 A Gina Walsh.

12 Q What was her -- was she successful in the primary or in
13 the --

14 A In the primary and in the general.

15 Q What is her race?

16 A She's white.

17 Q Did she receive endorsements?

18 A She did.

19 Q Do you recall which organizations that you know of
20 endorsed her candidacy?

21 A Some of them I do. I think it was the North County Labor
22 Association, which I think is kind of a conglomerate of
23 different labor organizations, and I think the
24 Ferguson-Florissant NEA endorsed her as well.

25 Q Did you receive any union endorsement in that election?

1 A I did, actually. The Coalition of Black Trade Unions,
2 which historically kind of votes with those same entities I
3 just described, broke from them to back me as a candidate.

4 Q And, Mr. Hudson, given your active role in local
5 elections and politics, are you familiar with recent
6 Ferguson-Florissant School District elections?

7 A I am.

8 Q In recent elections have you observed any patterns, if
9 any, related to race?

10 A Yes.

11 Q What are those patterns?

12 A The most obvious pattern is that black voters vote one
13 way and white voters vote another way.

14 Q What do you base your opinion on?

15 A My own experience, conversations with people who were
16 going to vote, and the election results after talking to
17 people and understanding where their support lies. Yeah.

18 Q And you said that black voters vote one way. Do the
19 candidates who you believe black voters vote for generally
20 win?

21 A No.

22 Q Let's talk through some recent school board elections.

23 A Okay.

24 Q Mr. Hudson, were you a resident of the FFSD in April of
25 2013?

1 A Yes.

2 Q And do you recall the 2013 district election?

3 A I do.

4 Q Do you recall the campaigns leading up to the 2013
5 election?

6 A I do.

7 Q Based on your observations during the 2013 school board
8 campaigns, which candidate do you think had the support of
9 African-American voters?

10 A Chuck Henson had overwhelming support, in my opinion, of
11 the African-American voters.

12 Q What leads you to believe that Chuck Henson had broad
13 support among African-American voters?

14 A Conversations with a lot of people. I want to say
15 hundreds, but I don't want to be quoted wrong on that. But I
16 feel like it was a hundred people over the course of the
17 election cycle. Yard signs, conversations with people at the
18 "High Achievement for All" meetings that Chuck and I would
19 both attend, the support was very obvious that he had in the
20 African-American community. I would say it would be
21 substantially large.

22 Q And what is Chuck Henson's race?

23 A He's black.

24 Q Was he elected in 2013?

25 A No.

1 Q Who did he run against?

2 A I believe he ran against Leslie Hogshead and Keith Brown.

3 Q And do you know Mrs. Hogshead or Mr. Brown's race?

4 A They were both white.

5 Q Which candidates were elected in 2013?

6 A Ms. Hogshead and Mr. Brown.

7 Q Do you believe that race was an issue in the 2013 school
8 board election?

9 A Yes, I do.

10 Q In what way did the topic of race come up in the 2013
11 school board election?

12 A Well, Chuck was a pretty vocal and outspoken advocate for
13 more inclusion, minority inclusion, in the district relative
14 to staffing. He was a big advocate of addressing the what we
15 call the "school to prison pipeline," which is something I
16 became familiar with in my professional life, and I've seen it
17 now in my personal life and its effects. The achievement gap.
18 All the ways that black students are particularly affected in
19 educational settings, he was an advocate for addressing those
20 things.

21 But the board, as it was then constructed, I don't
22 think was very supportive of that, and I think that his
23 presence in the election and the positions that he espoused
24 drove out his opposition, and it probably cost him some
25 endorsements, some funding, and other things that you

1 typically need to win an election.

2 Q And what is the basis for your belief that his positions
3 affected his campaign in the way that you just described?

4 MS. ORMSBY: Your Honor, I'm going to object as to
5 speculation.

6 MS. EBENSTEIN: The basis for --

7 THE COURT: Overruled. He can give his opinion.
8 Overruled.

9 MS. EBENSTEIN: Thank you.

10 THE WITNESS: Would you repeat the question, please?

11 Q (BY MS. EBENSTEIN) Sure. What is the basis for the belief
12 that you just stated that Mr. Henson's positions affected his
13 campaign in the way that you described?

14 A Well, the basis was what I would call an open secret. I
15 mean, as a parent in the district and one who's attended the
16 meetings, particularly "High Achievement for All" meetings,
17 that these kinds of things were openly discussed.

18 There was clear opposition to him on the board
19 relative to what he was talking about, and he would talk to me
20 about it. I think it was reflected in the electorate and the
21 way that people vote. You either vote for those candidates
22 who that you know support the kinds of positions that he
23 espoused or you don't, and I think that was reflected in the
24 election results.

25 Q Turning to the 2014 election, were you a resident of

1 Florissant in April of 2014?

2 A Yes.

3 Q And were you eligible to vote in 2014 local elections?

4 A I was.

5 Q Do you recall the 2014 school board elections?

6 A I do.

7 Q Do you recall who ran in that campaign?

8 A Yes, I do.

9 Q What were the names of some of the candidates who ran in
10 that --

11 A Well, on the one side you had kind of a slate of
12 candidates, I would describe them, which was, I believe,
13 Paulette-Thurman, James Savala, and Willis Johnson. On the
14 other side you had Mr. Morris, Mr. Chabot, and Mr. Martinez.

15 Q Was there the support for that first group of candidates
16 that you mentioned -- Thurman, Savala, and Johnson -- in the
17 African-American community in the school district?

18 A Yes, there was.

19 Q How do you know there was support for those three
20 candidates in the African-American community?

21 A Well, I attended some forums, some meetings,
22 conversations in the community. There was huge support for
23 them. And I think a lot of it had to do with -- I don't know
24 if I want to get ahead of myself here -- but some of the
25 things that were going on at the time. So the support they

1 had and then yard signs and every other way was pretty
2 obvious.

3 Q Was race -- was race an issue in the 2014 campaign?

4 A Yes.

5 Q And how did race come up in the 2014 campaign? What
6 issue did it come up related to?

7 A Well, there were a number of issues that came up in the
8 2014 campaign that were related to race. Some of them had to
9 do with discipline. Some of them had to do with student
10 safety in the district. Some of them had much to do with the
11 dismissal of or the suspension of Dr. Art McCoy. All of those
12 things, I think, centered around ultimately the issue of race.

13 Q Do you recall an issue -- have students ever been bused
14 or transferred into the Ferguson-Florissant School District?

15 A Yes, they have. State laws requires, I believe, that
16 school districts accept transfer students; so yes.

17 Q Has that been in any way an issue in the district?

18 A Yes.

19 Q The question of transfer students?

20 A Yes.

21 Q Do you believe that that does or does not relate to race
22 in any way?

23 A Absolutely. I do believe it does.

24 Q Could you explain how the issue of students transferring
25 to the FFSD relates to race?

1 A Well, for example, in the most recent case when the
2 controversy erupted around accepting students from Normandy
3 School District, which is almost 95 percent African American,
4 I believe, and Riverview School District, which is almost
5 again 95 percent African American, I think a lot of the
6 resistance that parents in the district saw or perceived was
7 based on the fact that these were more black students coming
8 in our districts.

9 Q And you mention -- you testified a moment ago in response
10 to my question that student discipline was an issue that came
11 up in the 2014 related to race. How was student discipline
12 raised in the 2014 school board campaign?

13 A Well, I think Savala and Thurman and Johnson understood
14 that we needed to take a look at some of the disciplinary
15 policies that are set in the district by the board, some of
16 the zero-tolerance stuff that we had concerns about, because
17 it disproportionately impacts black kids in that school and
18 all our schools. That was one of the primary reasons
19 disciplinary issues were presented in that election cycle.

20 Q And could you please explain why you consider student
21 discipline to relate to race?

22 A A couple of reasons. I mean, in my professional life,
23 I've done significant work on issues related to what's called
24 a "school to prison pipeline," which is a kind of an aggregate
25 of circumstances that result in more African-American kids

1 being put formally into the criminal justice process and
2 disproportionately into the criminal justice process than
3 white kids are.

4 And it starts in the schools where you have now seen
5 kind of overpolicing or greater law enforcement presence in
6 school settings, policies like zero tolerance that result
7 typically in exponentially higher rates of suspensions and
8 expulsion for black kids. And so it's a concern for us
9 because we do know that empirically there's almost zero
10 relationship between those policies and educational outcomes.

11 Q And you mentioned a moment ago -- well, were there other
12 issues that came up in the 2014 campaign that you believe
13 related to race?

14 A Safety was something that was presented as well. And I
15 think we saw that early on when the Normandy kids again were
16 up for transfer because there was some things going on with
17 their district that required them to be bused elsewhere.
18 Initially, I think they were going to go to the Francis Howell
19 district, and those parents in that community raised issues
20 relative to safety concerns that were very public and in the
21 media, and I think that was echoed again when the idea of
22 those same kids coming into the Ferguson-Florissant schools
23 was introduced. Some of the same kinds of concerns about
24 potential violence and other issues would be presented with
25 these kids being introduced into our schools.

1 Q Were you personally concerned that there were going to
2 be safety issues because of --

3 A Not at all. Not at all. If anything, these kids would
4 have been back on their heels. In a new environment and an
5 unfamiliar setting where they don't know anybody, I doubt that
6 they would have been very aggressive.

7 Q And you -- was there an event that occurred just prior to
8 the 2014 campaign that influenced the campaign at all? I
9 believe you mentioned it a moment ago. With the
10 superintendent?

11 A Oh, yeah. Yeah, Dr. McCoy.

12 Q Who is Dr. McCoy?

13 A Dr. McCoy is someone that I know, and he was the first
14 black superintendent of the Ferguson-Florissant School
15 District.

16 Q How do you view Dr. McCoy -- how did you view Dr. McCoy
17 as the superintendent?

18 A I had the highest opinion of his ability as an educator
19 and a motivator, and I thought that we were very lucky to have
20 him in our district.

21 Q Do you believe that Dr. McCoy was successful or
22 unsuccessful as the superintendent?

23 A I thought he was doing a terrific job. I mean, he was
24 recognized by the U.S. Chamber of Commerce as the
25 game-changing educator in Missouri. And I know that my kids

1 even would tell me how he would be in the schools and
2 interacting with students and keeping them focused and
3 motivated. And I thought that his work particularly with the
4 "High Achievement for All" effort where some of the concerns
5 of African-American parents who make up the majority in terms
6 of school population were being expressed and recognized, and
7 we were actually taking affirmative steps to us trying to
8 address some of those issues. I thought he was doing a
9 fantastic job.

10 Q Is Dr. McCoy presently the superintendent of the FFSD?

11 A No.

12 Q Did there come a time when he separated from the
13 district?

14 A Yes.

15 Q And before he separated from the district, did he have --
16 was there any action taken against him in the district?

17 A Yes. He was put on administrative leave, I believe, or
18 suspended, I guess, if those terms are interchangeable, I
19 don't know, but he was relieved of his duties.

20 Q Do you know why he was suspended in the district?

21 A No.

22 Q Did you ask board members why he was suspended in the
23 district?

24 A Yes.

25 Q And when did you ask why Dr. McCoy was suspended?

1 A Specifically, my turn to ask was on November 2013, at a
2 meeting of the board.

3 Q And where was that meeting of the board in November 2013?

4 A It was held at McCluer North High School as opposed to
5 where it's regularly held at the administration center on
6 Waterford because the crowd was so large.

7 Q Did you attend that entire meeting?

8 A I did.

9 Q And did you speak at that meeting?

10 A I did.

11 Q I'd like to show you a video excerpt marked Plaintiffs'
12 Exhibit 139. I show an excerpt.

13 **(VIDEO EXCERPT PLAYED.)**

14 Q Do you recognize this video, Mr. Hudson?

15 A I do.

16 Q And what does it depict?

17 A That was me addressing the board at the November board
18 meeting of 2013 that I told you about. It was inside the
19 McCluer North gymnasium, which was filled to capacity mostly
20 with parents there to try and get some explanation from the
21 board as to why Dr. McCoy was no longer our superintendent.

22 Q Did other people also speak at that meeting?

23 A Yes, they did.

24 Q Approximately how many people spoke at that meeting?

25 A I would say 50.

1 Q And did the board ever address the concerns that you
2 expressed that day?

3 A No, they did not.

4 Q How did the board respond to the concerns that you
5 expressed that day about Dr. McCoy's suspension?

6 A You know, it was extremely frustrating for me as a parent
7 and others as a parent -- as parents that I know because they
8 kept providing these shifting explanations. Initially it was
9 described to us or presented that the reason that Dr. McCoy
10 was no longer in position as our superintendent was a
11 difference in philosophy, philosophical differences, which,
12 when we looked at the mission statement of the district, his
13 actions as a superintendent were entirely consistent with
14 that; so we couldn't understand that puzzle.

15 And then it became something different. I think it
16 was a failure to follow some directive or something like that.
17 And then it morphed, if those who were present and can recall
18 publicly, the idea that there was something to do with
19 attendance records that had been falsely or submitted and then
20 manipulated and that the district got monies that it wasn't
21 supposed to get, which, as it turned out, that was standard
22 practice for districts to amend their numbers to make sure
23 that they got them right. So that was nothing. There was
24 never any transparency in it for the parents in the district
25 that we felt like the board were in service to.

1 Q And you said a moment ago that you requested information
2 on the failure to follow some sort of directive. Did you ever
3 receive that information from the board?

4 A Well, I did follow up on my Sunshine Law requests; so I
5 got those records of the minutes from the meetings. And as I
6 suspected, I could find no thing in the record that would
7 indicate what they had described to us.

8 Q How did you understand the board's treatment of Dr.
9 McCoy?

10 A I think I understood it, based on my observations and
11 even conversations that I had with Dr. McCoy, as adversarial
12 and undermining and not a very good relationship at all.

13 Q Were you surprised by the board's treatment of Dr. McCoy,
14 the first black superintendent?

15 A I was not.

16 Q Why not?

17 A Because the board as it was then constructed I think
18 understood that they didn't have to listen to us. They didn't
19 have to really, frankly, address our concerns or be concerned
20 about them. And they acted with indifference towards us as --
21 and when I say "us," I mean African-American parents in the
22 district who overwhelmingly supported Dr. McCoy. We were
23 treated with great indifference, I believe.

24 Q Turning now to the 2015 election in Florissant, were you
25 a resident of Florissant in April of 2015?

1 A Yes, I was.

2 Q Were you eligible to vote in the 2015 local election?

3 A Yes, I was.

4 Q Do you recall the 2015 campaign for the school board?

5 A Yeah. Yeah.

6 Q And do you recall, leading up to the municipal elections
7 in Ferguson, more or less attention than usual paid to local
8 elections generally?

9 A Significantly more.

10 Q Could you explain?

11 A Well, Ferguson -- you know, I don't want to risk
12 overstating it, but I don't think that I can. Ferguson had
13 become a focal point of interest for the entire world at that
14 point. After Mike Brown was killed, the entire world was
15 paying attention to what was going on in our community, and I
16 think that definitely had an impact on our elections as well.

17 Q And you mentioned earlier in your testimony that you
18 follow a number of different news sources, national, and you
19 named those specific news sources. Were you following news
20 sources in April of 2015?

21 A Yes.

22 Q What sort of issues were covered?

23 A Oh, the racial disparities that were present in Ferguson
24 in a whole host of arenas relative to criminal justice,
25 relative to employment, relative to municipal representation,

1 those things were front and center in many of -- I'm sorry --
2 much of the media reporting about Ferguson at that time.

3 Q And was there coverage of the local election during that
4 time?

5 A Yes.

6 Q How long have you been a resident of the FFSD?

7 A Eighteen years.

8 Q Do you recall any other instance in those 18 years where
9 there was national or international coverage of
10 Ferguson-Florissant local elections?

11 A No.

12 Q How would you characterize the attention paid to the 2015
13 election, particularly with regard to race and the election?

14 A It was extraordinary. I think -- I don't think you can
15 legitimately debate that it was extraordinarily high coverage
16 for that particular community -- both local, national, and
17 international.

18 Q And in general with regard to school board election
19 campaigns, do you believe that all voters have an equal
20 opportunity to elect the candidates they want to represent
21 them?

22 A No, I do not.

23 Q Why not?

24 A Well, in order to be elected, you have to have more than
25 just numbers. You need money, funding to do mailers, to do

1 public education about the fact that you are a candidate. You
2 need resources. You need an organization. You certainly
3 would like to get some endorsements. And black candidates
4 typically in north St. Louis County lack those kinds of
5 resources.

6 Q What is the organization the Ferguson-Florissant National
7 Education Association? With you familiar with that
8 organization?

9 A Yes. It's a teachers' union, I believe.

10 Q And is the what I'll call the FFNEA involved at all with
11 FFSD elections? I know that's a lot of abbreviations.

12 A Sure. Sure, they are. They interview candidates, select
13 candidates, endorse candidates, fund candidates, and work for
14 candidates that they decide to support.

15 Q Overall, how would you characterize the effect of an
16 FFNEA support or endorsement in FFSD elections?

17 A I think it has a significant impact on outcomes, election
18 outcomes. Typically, their candidates win -- their candidates
19 they support.

20 Q And, Mr. Hudson, do you know the racial composition of
21 the current FFSD school board?

22 A I believe there are five white board members and two
23 black board members.

24 Q And do you recall what has been the racial composition of
25 the school board since your daughters have been in high

1 school?

2 A It's always been a majority-white board. I think at some
3 points in time, since we've moved here, it's been all white,
4 but I don't think there's ever been any more than two blacks
5 on it.

6 Q Do you believe that African Americans have adequate or
7 inadequate representation on the board?

8 A I think it's inadequate.

9 Q Do you believe that overall the members of the FFSD
10 school board have represented your interests in the last five
11 years?

12 A Overall? I would say I don't even feel like they've
13 acknowledged the interests that I have and many in the
14 African-American community have relative to our schools. No.

15 Q Do you believe that the African-American community and
16 the white community in the district have the same interests or
17 same needs as one another?

18 A We all want to see our kids educated, I understand that,
19 but given the impact of race on education, I would say no.

20 Q What are some of the needs that you believe are different
21 or particular to African-American residents of the district?

22 A Well, we certainly have issues relative to discipline in
23 the schools or disciplinary policies in the schools, the
24 achievement gap, how our children are being taught, who
25 they're being taught by. There's a really shameful lack of

1 diversity, I think, in some of the schools relative to
2 staffing.

3 For instance, at my daughter's elementary school,
4 when we first moved to the district, we were shocked to see
5 that even though the student population was 95 percent African
6 American, I think there were only two black teachers in the
7 building. The rest of the African-American staff in that
8 building was custodial.

9 Q You mentioned a moment ago school discipline. Are you
10 aware of any ways in which the school board plays a role in
11 school discipline?

12 A Yeah. They set policy for the district, and I think they
13 hear appeals relative to suspensions. So they play a
14 significant role in disciplinary activity in the district.

15 Q You mentioned earlier that there are disparities in
16 discipline. How are you aware of disparities?

17 A Well, in my professional life, I mean, that's been part
18 of my business for a number of years now, is not only to study
19 those disparities but to try to address them and work with
20 different entities to try to address the disparities. But
21 this is very common knowledge. It's widely available public
22 information relative to race and its adverse impact on
23 students of color, and suspensions.

24 Q Are there other disparities that you're aware of in the
25 district either that implicate students or -- black students

1 or other African-American residents of the district?

2 A I think educationally I would say relative to advanced
3 courses and advanced placement courses, and those kinds of
4 opportunities, I think they're fairly limited when it comes to
5 our students' access to those opportunities.

6 Q And you just mentioned two ways in which African-American
7 communities may have different concerns when it comes to race
8 and education. Has the board been responsive to your concerns
9 related to discipline or the differences in achievement based
10 on race?

11 A No.

12 Q Do you think that there's an effect of the board's
13 nonresponsiveness to the concerns of the African-American
14 community when it comes to race and educational --

15 A Over time? Over time, yes, I do. I think if you are
16 confronted with indifference long enough and an inability to
17 address or change the situation that allows for people to be
18 indifferent to your interest, I think people become
19 disaffected. I think they disengage and try to find other
20 ways to do what it is they need to do for their kids.

21 I think you have some communities that probably feel
22 more marginalized now than they have in the past relative to
23 their ability to have a voice in the systems that affect their
24 families and their kids, and I think African-American
25 participation just in the process relative to the school

1 board, elections -- anything -- is diminished by the idea that
2 people in charge of running this district don't care about us
3 and there's nothing you can do about it.

4 Q Just to summarize, Mr. Hudson, overall what do you think
5 is the effect of the amount of African Americans' preferred
6 candidates' representation on the school board that you just
7 described?

8 A Can you say that again?

9 Q Sure. I didn't say it very well the first time. I'm
10 sorry.

11 A I didn't listen very well. I'm sorry.

12 Q Overall what is the effect of what you described as
13 currently only having two black members on the board,
14 previously sometimes having an all-white board? How do you
15 think that affects the school district?

16 A I think it has a negative effect on the school district,
17 particularly when it comes to black parents' participation and
18 engagement when we know the history there, we've seen what we
19 think is in the short term some pretty bad history there
20 relative to our interests and the people that we support not
21 just on the board but in the district itself, with Dr. McCoy.
22 So you have a rift that I think is continuing to grow in some
23 respects between the board and the community that is
24 ostensibly there to serve.

25 MS. EBENSTEIN: Thank you, Mr. Hudson. If you can

1 just give me a moment to consult.

2 Mr. Hudson, thank you very much. I have no further
3 questions at this time.

4 THE COURT: Thank you, sir. We'll take our lunch
5 recess at this time. The criminal case will convene in five
6 minutes. I'll see everybody else at 1:45.

7 **(COURT RECESSED FROM 12:35 PM UNTIL 1:53 PM.)**

8 THE COURT: Are you ready?

9 MS. EBENSTEIN: Yes, Your Honor.

10 THE COURT: I'll remind you, sir, you're still under
11 oath.

12 You may proceed.

13 **CROSS-EXAMINATION**

14 **BY MS. ORMSBY:**

15 Q Good afternoon, Mr. Hudson. My name is Cindy Ormsby, and
16 I'm the attorney for the Ferguson-Florissant School District.

17 A Good afternoon.

18 Q How are you this afternoon?

19 A I'm feeling a little sluggish after lunch, but I'm okay.

20 Q All right. Well, maybe I'll try to take a little
21 advantage of that.

22 THE COURT: Take advantage of him.

23 A I knew you would.

24 THE COURT: Did you take advantage of the cafeteria
25 downstairs?

1 THE WITNESS: No. I was somewhere else.

2 THE COURT: Oh, okay.

3 Q (BY MS. ORMSBY) Mr. Hudson, you stated you voted very
4 often, right?

5 A Say that again.

6 Q You vote very often?

7 A Yes.

8 Q And you stated that you've run for election a couple of
9 times?

10 A Yes.

11 Q Four times? Did I hear that right?

12 A Twice.

13 Q So is there anything that keeps you from voting?

14 A No.

15 Q Have you ever done any analysis of the registration
16 numbers of African Americans versus whites specific to the
17 Ferguson-Florissant School District?

18 A No.

19 Q Do you know when you ran for election whether or not any
20 white voters voted for you?

21 A Based -- are you asking me for my opinion?

22 Q Yes.

23 A Yeah. Based on my opinion -- I'm sorry, not based on my
24 opinion, but based on my experience and my interactions, no.
25 They were very vocal in the opposition to me. In the places

1 where I met them or saw them, they were pretty clear that they
2 didn't support my candidacy.

3 Q You didn't meet any white people who were supportive of
4 you?

5 A I had a very small number.

6 Q Okay.

7 A Yeah. So if "any" qualifies as more than one, then yes.

8 Q "Any" does. Have you ever supported a white candidate
9 for any election? Any election?

10 A Yes. Do you mean Ferguson-Florissant School District, or
11 you mean just any election?

12 Q My first question was for any election.

13 A Yes.

14 Q I just wanted to clear something up. You stated with
15 regard to the 2014 election that Chris Martinez was a
16 candidate?

17 A I think so.

18 Q Okay. Is Chris Martinez currently on the board?

19 A I don't think so.

20 Q And when would -- if he was on the board, when would his
21 election have been?

22 A Right now I guess it would have been the 2014.

23 Q And he's not currently on the board, correct?

24 A I don't think so.

25 Q So is it possible he didn't run for reelection in 2014?

1 A It may be possible. I thought he did.

2 Q And you listed several candidates, but you didn't list
3 all of the candidates that year, did you?

4 A No.

5 Q So let's talk a little bit about Dr. McCoy. In your
6 declaration you say that Dr. McCoy was removed, but is it your
7 understanding that Dr. McCoy resigned, or was he terminated?

8 A I think he was constructively terminated. He was removed
9 and given several reasons for his removal that were
10 inconsistent, and at some point he decided to leave, which I
11 would have done the same thing under similar circumstances.

12 Q And you're aware that if Dr. McCoy had gone through with
13 the termination process, that the reasons that the board was
14 terminating him would have been made public at the public
15 hearing?

16 A No.

17 Q You weren't aware of that?

18 A No.

19 Q You stated that, I believe in your video that we saw,
20 that you stated that the board could release the reasons if
21 Dr. McCoy said it was okay. Correct?

22 A Yeah. I see in the video I said that.

23 Q Are you aware that Dr. McCoy refused to sign a release
24 for the board to discuss those reasons?

25 A No. I'm not aware of that. But I would like to know

1 what his reasons were, because there are any number of
2 reasons, from my own experience, that refusal to sign
3 something like that does not necessarily lead to the
4 conclusion that you have done something wrong. There may be
5 any number of reasons, future employment among them.

6 Q Are you aware that when Dr. McCoy resigned, there was a
7 joint statement issued by both him and the board stating that
8 the reasons for his suspension were not racial in nature?

9 A No.

10 Q Do you know Dr. McCoy personally?

11 A Yes, I do.

12 Q Did you ask him why he was suspended?

13 A Did I ask him what?

14 Q Why he was suspended.

15 A No. We talked prior to that about the board's opposition
16 to the transfers, which he made very clear to me that was what
17 he --

18 Q Sir, my question is did you ask Dr. McCoy why he was
19 suspended?

20 A No. You didn't let me finish my question.

21 THE COURT: Well, but the answer is no.

22 THE WITNESS: Okay.

23 THE COURT: Sorry.

24 THE WITNESS: All right.

25 THE COURT: The attorney for the plaintiffs will be

1 able to ask you some follow-up questions.

2 THE WITNESS: I understand. I understand.

3 Q Did you ask Dr. McCoy why he resigned?

4 A No.

5 Q So you weren't comfortable asking Dr. McCoy for those
6 reasons, but you wanted the school board to tell you those
7 reasons?

8 A I didn't see him to ask him that after he resigned. For
9 a very long time, he was not necessarily publicly available,
10 and he's not -- I didn't seek him out for those answers. I
11 figured I would get an answer from him at some point. So I
12 would have been comfortable asking him. I just hadn't had the
13 opportunity at that point.

14 Q Have you had the opportunity since then?

15 A I haven't seen him since then.

16 Q Do you believe that the board should have discussed the
17 reasons for Dr. McCoy's suspension against his wishes?

18 A Well, as much as they didn't always respect his wishes in
19 other areas, I'm a little confused by it, but I guess
20 ultimately no.

21 Q You talked a little bit about a situation that came up
22 with regarding the reporting of attendance to the state, and
23 it was your belief that nothing ever came of that. Is that
24 correct?

25 A No.

1 Q That's not what you said?

2 A No. That's not what I believed, that nothing ever came
3 of it. What I was -- my understanding of what came of it was
4 that it was decided that the procedures that were used in
5 reporting those numbers did not fall outside of any
6 regulation; that it is not uncommon for schools to amend the
7 numbers to make sure that they get the right numbers reported;
8 so what could appear as manipulation was really correcting
9 numbers.

10 Q Are you aware that the school district had to pay money
11 back to the state because attendance numbers were reported
12 incorrectly?

13 A Intentionally incorrectly?

14 Q Are you aware that the school board, as a result of that
15 report, had to pay money back to the State of Missouri because
16 attendance numbers were reported incorrectly?

17 A No.

18 Q Do you believe that Dr. Thurman is -- do you believe that
19 Dr. Thurman is representing the interests of the African
20 Americans in the school district?

21 A I will be frank with you. I have not been as engaged
22 with the activities of the school board since that last
23 election. I, like so many others in the community, have been
24 a little bit disaffected. My focus has been more on my own
25 students in the district. I haven't heard any reports that

1 she's operated adverse to our interests, though.

2 Q How about Dr. Graves? Any --

3 A Same answer.

4 Q Did Dr. Graham -- when she was on the board, did she
5 represent the interests of African Americans?

6 A I believe so.

7 Q Are you aware the board recently hired a new
8 superintendent?

9 A Yes.

10 Q Have you met him?

11 A Just recently. I was at a forum that he spoke at; and
12 then, of course, I became aware of him again a couple of days
13 ago when the *St. Louis Post Dispatch* reported on some problems
14 he had in his prior district, which I don't think should
15 affect him in this district. And then I think I met him on
16 the elevator about an hour ago.

17 Q From what you've met -- from what you know of him, do you
18 believe he's qualified?

19 A His qualifications on paper, what I heard at the forum,
20 yes.

21 Q Is the forum you talk about the forum where they were
22 introducing the final list for superintendent?

23 A At McCluer South-Berkeley, yes.

24 Q Do you believe the board picked the best candidate out of
25 the two that you met?

1 A I didn't meet the other one. I sought the other one. I
2 don't know. I didn't really do a thorough investigation; and,
3 you know, I think I was a little bit cynical because I thought
4 the board was out to find a new black superintendent because
5 they fired the last one. And given the circumstances written
6 large with Mike Brown and the Department of Justice
7 investigation and everything else that was going on here, I
8 think I was a little skeptical about any choice that they
9 made, and I expected them to hire an African-American
10 superintendent to replace Dr. McCoy.

11 But having said that, I'm hopeful that he's
12 qualified. I don't know which of the two would have been more
13 qualified; but, you know, like I said, on paper he looks
14 pretty good.

15 Q So you stated in your declaration and in some of your
16 testimony that you heard some board candidates in 2014 discuss
17 the school transfer issue involving unaccredited schools; is
18 that right?

19 A Yes.

20 Q And you heard them discussing disciplinary issues; is
21 that right?

22 A Yes.

23 Q And classroom disruptions?

24 A Yes.

25 Q Safety in the schools?

1 A Yes.

2 Q Are you saying that these are not legitimate topics of
3 conversation in a board campaign?

4 A No. I never said that. It would be nice to hear them
5 discussed in context, though, as opposed to tools to leverage
6 the fears of white voters in our district, which is what I
7 think they were doing.

8 Q Were you at any of the candidate forums that year?

9 A I don't recall. I know I was at that board meeting with
10 one of the candidates who was going to run --

11 Q My question was were you at any candidate forums that
12 year?

13 A I don't recall.

14 Q Were you at any events where the candidates were present
15 and other parents or constituents were there to ask questions
16 of the candidates?

17 A That's the same thing, isn't it?

18 Q I said "any events," not just forums. Were you at any
19 school board candidate event in 2014?

20 A Yeah. Yeah. Yeah. Yeah.

21 Q What event were you at?

22 A It wasn't an event. I think it was a meeting with
23 Savala, Thurman, and Wilson where they met with a small group
24 of people, one that I wouldn't describe as a large meeting,
25 but a small group of people to discuss some of the issues that

1 were important to them during their candidacies.

2 Q But you weren't there for an event with all of the
3 candidates or the majority of them?

4 A 2014? I think I was at one at the church at Dr. Rance
5 Thomas' church. I think he hosted one, and I think I was
6 there for that.

7 Q Okay. And did you hear parents bring up concerns about
8 discipline and disruptions in the classroom?

9 A Yeah. I expect them to.

10 Q So those are topics that school board candidates should
11 address?

12 A Yes.

13 Q Are you aware of a time when the school board ever voted
14 to prevent student transfers from Normandy or Riverview
15 Gardens?

16 A I think that would have been illegal under Missouri state
17 law.

18 Q Are you aware that Ferguson-Florissant accepted the
19 second highest number of transfers from Normandy and Riverview
20 Gardens in St. Louis County and in St. Charles County?

21 A In 2014?

22 Q Yes.

23 A No. But I think they were compelled to do so because
24 they couldn't under state law necessarily refuse.

25 Q Are you aware that the board contacted the county branch

1 of the NAACP and had a meeting with regard to Dr. McCoy's
2 suspension?

3 A I think I became aware of it after the fact.

4 MS. ORMSBY: I don't have anything else.

5 THE COURT: Thank you.

6 Any redirect?

7 MS. EBENSTEIN: Just one second.

8 THE COURT: Sure.

9 MS. EBENSTEIN: No, Your Honor. No redirect.

10 THE COURT: Thank you, sir. You may step down.

11 If you would call your next witness, please.

12 MR. ROTHERT: Your Honor, at this point we would have
13 been calling Mr. Paul Schroeder. He is under subpoena, and he
14 is not available today; so we'd like to reserve --

15 THE COURT: Take him out of order?

16 MR. ROTHERT: Right. Take him out of order.

17 THE COURT: If there's no objection to that,
18 obviously we'll do that.

19 MR. ROTHERT: Okay. And we'd like to just move for
20 the admission. I don't know. Rather than read any deposition
21 designations to you, which we're sure you would find highly
22 entertaining, we'd like the Court to accept the deposition
23 designations for Mr. Keith Brown, Mr. Brian Scott Ebert, Dr.
24 Donna Paulette-Thurman, Dr. Courtney Graves, Ms. Leslie
25 Hogshead, Mr. Paul Schroeder, S-c-h-r-o-e-d-e-r, Mr. Robert

1 Chabot, and Dr. Jowei Chen. The first name is spelled
2 J-o-w-e-i. And we have copies of those designations with the
3 counterdesignations.

4 THE COURT: Good. That's what I was going to ask, if
5 we could amalgamate.

6 MS. ORMSBY: I would move that our
7 counterdesignations also be moved into evidence.

8 MR. ROTHERT: And they're all in one document.

9 THE COURT: Super.

10 MR. ROTHERT: It takes two binders.

11 THE COURT: Okay.

12 MR. ROTHERT: We're also submitting the one that was
13 read as well.

14 THE COURT: Okay. Thanks.

15 MR. ROTHERT: And subject except for maybe calling
16 Mr. Schroeder, we have no further evidence.

17 THE COURT: Okay. Let's go ahead and take a
18 ten-minute break till 2:20, and we'll begin with the
19 defendants' case. Who is your first witness?

20 MS. ORMSBY: First witness is Dr. Donna Thurman.

21 THE COURT: Okay. We'll reconvene at 2:20.

22 **(COURT RECESSED FROM 2:05 PM UNTIL 2:20 PM.)**

23 THE COURT: If you would call your first witness. Do
24 you have a binder?

25 MS. ORMSBY: First, Your Honor, I'd like to move our

1 exhibits into evidence, if that's all right with you.

2 THE COURT: Sure. That's fine.

3 MS. ORMSBY: The exhibits that are stipulated to
4 are -- can I just read them off by letter?

5 THE COURT: Yeah.

6 MS. ORMSBY: A, B, D, E, F, G, H, I, J, K, L.

7 THE COURT: It's a DWI traffic stop.

8 MS. ORMSBY: L, M, N, O, P, Q.

9 THE COURT: You'd have to do it backwards to survive
10 the stop, though.

11 MS. ORMSBY: Skip R. S, T. Skip U. Y.

12 THE COURT: Y?

13 MS. ORMSBY: Yes. KK, LL, MM, NN, OO, PP, QQ, RR,
14 SS, TT, UU, VV, WW, XX.

15 MR. ROTHERT: No objection.

16 THE COURT: All right. All received without
17 objection.

18 MS. ORMSBY: In addition, Your Honor, we'd like for
19 you to take judicial notice of some statutes.

20 THE COURT: Super.

21 MS. ORMSBY: Revised Statutes 160.261; 162.261;
22 167.241; 162.341; 167.131; 167.121; 162.291.

23 THE COURT: Just make sure you provide those to
24 plaintiffs' counsel so they can cross-reference to make sure
25 they are in fact currently in effect.

1 MS. ORMSBY: Finally, Your Honor, we'd like for you
2 to take judicial notice of the Missouri Department of
3 Elementary and Secondary Education Guidance for Student
4 Transfers from Unaccredited Districts to Accredited Districts.

5 THE COURT: Any objection to that?

6 MR. ROTHERT: We do not object to judicial notice to
7 any of the statutes. They all look current in these versions.
8 We do object to judicial notice of a document from a website
9 that hasn't previously been disclosed.

10 THE COURT: All right. Well, we'll take that up or
11 provide any further information necessary. And certainly give
12 him -- well, thanks. All right.

13 So call your first witness.

14 MS. ORMSBY: Dr. Donna Thurman.

15 THE COURT: If you would step forward, ma'am, and be
16 sworn.

17 **(WITNESS SWORN BY THE CLERK.)**

18 THE COURT: Who's up on your side?

19 MS. EBENSTEIN: I am.

20 THE COURT: Are you ready?

21 MS. EBENSTEIN: Yes.

22 THE COURT: You may proceed.

23 **DONNA PAULETTE-THURMAN,**
24 **HAVING BEEN FIRST DULY SWORN, WAS EXAMINED AND TESTIFIED AS**
25 **FOLLOWS:**

DIRECT EXAMINATION**BY MS. ORMSBY:**

Q Dr. Thurman, would you state your name for the record?

A Donna Paulette-Thurman.

Q Dr. Thurman, do you live in the Ferguson-Florissant School District?

A Yes, I do.

Q What's your address?

A 12959 Eadstone Lane, Florissant, Missouri, 63133.

Q Do you currently serve on the Ferguson-Florissant School Board Education -- Board of Education?

A Yes, I do.

Q When were you elected?

A In 2014, April.

Q Do you believe that you bring all perspectives of all people in the district to the board?

A All perspectives?

Q All that come to you? To the best of your ability.

A To the best of my ability, yes.

Q How would you describe your neighborhood as far as racial integration?

A We have lived in our neighborhood for approximately 29 years, and it's pretty mixed. We have black, white, mixed, or all types. It's very integrated, I'll put it that way.

Q And how long have you lived in the Ferguson-Florissant

1 School District?

2 A Twenty-nine years.

3 Q What's your highest level of education?

4 A I have my doctorate in education.

5 Q And what is your current occupation?

6 A I'm retired.

7 Q You're retired?

8 A Yes.

9 Q What did you do before you retired?

10 A I was an educator. I was an administrator. School
11 principal, elementary school principal.

12 Q Where were you a school principal at the time of your
13 retirement?

14 A The Ferguson-Florissant School District at Holman
15 Elementary School.

16 Q How long did you work for the Ferguson-Florissant School
17 District?

18 A Fifteen years.

19 Q Were you at all times an administrator during that time?

20 A Yes.

21 Q So when you were hired, you were hired as a principal?

22 A Yes.

23 Q And tell me again when you were elected to the school
24 board.

25 A April of 2014.

1 Q Since you've been on the board, do you find that the
2 board accepts your input when it comes to the concerns of the
3 African-American community?

4 A Yes. I can give you some examples of that.

5 THE COURT: She'll ask you questions.

6 A Okay.

7 Q Sure. In your experience, how does the board respond to
8 the needs of the African-American community?

9 A Mainly, our topics of discussion are about children. In
10 our discussions, many of them come to our African-American
11 children because our schools are predominantly African
12 American. And we're finding that there is an achievement gap
13 with our students; so there's a lot of discussion about the
14 achievement gap and what we're going to do to help students
15 who are failing -- and not just African-American students but
16 all students who are failing.

17 The other concerns that we do discuss are about
18 discipline and safety. And I think most of these are the
19 topics that you would hear in any -- I think any school board
20 across the nation.

21 Q Is the board accepting or hostile to your point of view?
22 What is their reaction to your point of view?

23 A Since I've been on the board a year and a half now, and
24 what I found is that, when I do speak, they do listen. It
25 doesn't mean that they always agree with what I say, but they

1 are listening, and we do have a lot of discussions about race.

2 Q Does the school district have an achievement gap?

3 A Yes.

4 Q Does Hazelwood School District have an achievement gap?

5 A Yes.

6 Q Are you aware, in your knowledge, of a district in the
7 state of Missouri that does not have an achievement gap?

8 A No.

9 Q Can you explain to the Court what an achievement gap is?

10 A The achievement gap is any type of disparity between the
11 race of -- between races. For example, in our school district
12 white race tend to do better academically and score better on
13 tests than our African-American students, and that's been that
14 way for a while.

15 Q Was there an achievement gap when you were a principal in
16 the school district?

17 A Yes.

18 Q Who was the superintendent when you were a principal?

19 A Oh, gosh. Scheer. Oh, Walters? I can't remember his
20 name, but Dr. Scheer, Jeff Spiegel, and there was one other,
21 and I can't think of his -- it was Walters? I think it was
22 Dr. Walters. I can't remember his name.

23 Q During the time that you were an employee of the school
24 district, did the achievement gap get better or worse; do you
25 know?

1 A The best that I can recall is that it has gotten wider.
2 It's been getting progressively wider, yes.

3 Q What is the role of the school board in addressing the
4 achievement gap?

5 A First of all, for them to be aware that there is an
6 achievement gap. Our major job is to make sure that we have
7 people in place -- "people" meaning our superintendent, a
8 leader in place who knows that, and their responsibility is to
9 work and to make that -- to do things to counteract that and
10 to help the achievement gap to close.

11 Q Do you believe you currently have a superintendent that
12 is working to do that?

13 A Yes. Yes.

14 Q Let's look a little bit at your election in 2014. When
15 you ran, were you a part of any sort of slate or group of
16 candidates?

17 A Yes.

18 Q How did you become a part of that slate?

19 A I was asked by several people to run for the board. I
20 had thought about it, and I thought about it for a couple of
21 years, and I just did not do it; but then I was asked by
22 several people to do it, and I made the decision to do it, to
23 run for the board.

24 Q And was that a result of requests from the Grade A for
25 Change slate or just individual people? Who were asking you?

1 A Individual people. And I did -- I was asked by the Grade
2 A for Change. It wasn't Grade A for Change at the beginning,
3 but it was a group of -- it was a Political Action Committee
4 of citizens who started off looking for candidates to run for
5 the board.

6 Q How did they recruit their candidates?

7 A Initially the Political Action Committee, or citizens --
8 I'll just say "citizens" -- were looking for people to run for
9 the board for several reasons. There was the issue of Dr.
10 McCoy at the time, and there was also the issue of Normandy
11 becoming unaccredited, and they were looking for people to
12 help with that, or they were coming together to meet to talk
13 about those concerns.

14 Q So how did it turn into them getting a slate of
15 candidates to run?

16 A Through most of the meetings -- and I attended
17 approximately, that I can recall, maybe three or four
18 meetings. And through discussion, through brainstorming they
19 came up with several ideas of how we could be helpful to
20 Normandy and also to Ferguson-Florissant, and one of the
21 things that came up is that we needed to get more candidates,
22 African-American candidates, to run for the school board.

23 Q Was it difficult for Grade A for Change to recruit the
24 candidates for their slate?

25 A I'd have to say yes, because -- can I explain?

1 Q Yes, please.

2 A I can remember -- from what I can remember, people -- we
3 talked about it, we met, and we were or the citizens were
4 asking for people to volunteer and to even, like, stand in the
5 middle of a meeting and say, "Would you be willing to run?"
6 And I would say in a room of maybe, on the average, 100, 120
7 people, maybe three or four people stood. Not all of those
8 people decided to do it, and at that point is when I really
9 started thinking someone has to do it; someone needs to step
10 forward.

11 And these were some of the things that were being
12 said in the meeting. Someone needs to do it. And I finally
13 decided that "someone" maybe could be me. So I just did a lot
14 of thinking about it and actually praying about it and made
15 the decision that I would go ahead and run.

16 Q So you put your name in the hat?

17 A Yes.

18 Q What happened next?

19 A Several things happened. Citizens decided to put
20 together a smaller group or committee to start to interview
21 people who might be interested in running for the board to see
22 if they would be a candidate that they would be -- that they
23 would want to back. And at that point citizens and Grade A
24 for Change parted. Grade A for Change became the group that
25 would work with those who were wanting to run for the school

1 board. They became the Political Action Committee for those
2 people who wanted to run for the board.

3 Q Okay.

4 A And so once they got the names together, they invited us
5 to a meeting, and they asked us questions. First of all, they
6 came up with a list of things that they would want to see in a
7 candidate.

8 Q Do you remember anything that was on that list?

9 A Oh, gosh. I knew you were going to ask that. Number
10 one, that they were concerned about what was going on with
11 African-American students in the district. They wanted to
12 make sure that they understood that accreditation was a big
13 thing. They wanted to have someone who was interested in the
14 community and did work in the community, someone who would be
15 able to go out and speak and be able to articulate the goals
16 of the Grade A for Change committee, and they wanted someone
17 who was able to understand the finances of the district. It
18 was just quite a few, maybe about ten things, that they wanted
19 the person to be able to do or have that quality or be
20 qualified to run as a candidate.

21 Q Okay. So they put out those qualifications; they
22 interviewed the people who were interested.

23 A Uh-huh.

24 Q Then what happened?

25 A We received a phone call and said, "You were selected as

1 a candidate, and now we'd like to get together and talk to you
2 about strategies."

3 Q Who were the three people that were selected originally?

4 A Val Bush, James Savala, and myself.

5 Q And Mr. Bush? Mr. or Ms.?

6 A Mr. Bush.

7 Q Mr. Bush was not a candidate for the 2014 election; so
8 what happened with Mr. Bush?

9 A Val Bush became ill and made a decision to back out
10 because he didn't feel that he could represent or work -- do
11 the work that needed to be done in order to be a viable
12 candidate for the board.

13 Q So he was replaced with?

14 A Well, Grade A for Change decided to go back and ask for
15 more support and let people know that Val would not be able to
16 run and to get some more names to come out and to possibly
17 interview for being on the slate.

18 And so we had a couple of meetings and met with
19 several people. At one of the meetings, F. Willis Johnson was
20 invited, and I think the other person was a Kelly Gilliard,
21 who had been working with the committee, really working hard
22 with the committee, and they had asked her to possibly become
23 one of the candidates.

24 After talking with her, she decided she did not want
25 to run, and F. Willis was the other person who was selected to

1 be a part of the slate.

2 Q So was all this done prior to actually filing for school
3 board, or was it during the filing process? Were you
4 selected -- go ahead. I'll stop there. I'll ask only one
5 question. Was this done before candidate filing?

6 A Yes, it was.

7 Q Now, were you motivated by -- what motivated you to run
8 for school board? Any particular incident?

9 A No. And I had this discussion a lot, this discussion
10 especially with my husband. And he asked me, "What is it that
11 motivated you to run?" And my primary reason for running was
12 because I'm an educator. I live in the district. I love the
13 district. I really felt that I had a responsibility to do
14 what I could or give back to the community what the community
15 had given to me.

16 We have lived in that community for almost 30 years.
17 And as an educator I also knew what was going on in the
18 schools. I understood a little bit of the politics and
19 education in the Ferguson-Florissant School District, had a
20 little bit of understanding about governance, but never had I
21 run for a political office. And that's one of the things that
22 kind of scared me a little bit.

23 The other issue that was going on was the Dr. McCoy
24 issue that came up, and I must say initially I just -- I
25 didn't understand what was going on with that. And I can't

1 say that that was the reason I ran, but all of those other
2 reasons, including that reason, made me decide that it was
3 time for me to run. I had thought about it earlier, like
4 maybe two years prior, and my health wasn't the best at that
5 time, and I finally decided this is the time for me.

6 Q Okay. Were you in the courtroom when Mr. Hudson provided
7 his testimony?

8 A Yes.

9 Q You saw the video of that big meeting at McCluer North?
10 Board meeting -- the board meeting at McCluer North?

11 A Yes.

12 Q Were you present at that meeting?

13 A Yes, I was.

14 Q What were your feelings before going into that forum and
15 after leaving that forum?

16 A Initially going into the meeting, I was, I don't want to
17 say angry. I was disappointed and just -- I'm not sure what
18 word to use, but the closest word that comes to me is somewhat
19 angry about that, the entire situation. And, of course, with
20 hearing from different friends in the district and talking to
21 people about what's going on and what was going on, I did not
22 know exactly what the reason was for him being suspended. I
23 know Art, I knew him because I worked with him, and I just
24 thought he walked on water, actually. I thought he was a
25 very, very intelligent young African-American male who was a

1 good role model for the school district, and I was ecstatic
2 when he was selected as the superintendent. I had since
3 retired; so I didn't work under him.

4 And I walked into the meeting, and I saw how many
5 people were there and how concerned they were about what was
6 going on with Art McCoy. And I looked and I saw the board
7 who, I don't know if you saw in the video, they were sitting
8 across the front of the auditorium, or the gym, in front of
9 the table, not behind the table. And they were listening to
10 the comments that were coming from the audience.

11 And then something struck me as I was in that
12 meeting. And I thought as -- and I'm going back and I'm
13 putting on my principal cap right now. And I thought about
14 situations when I had to put a teacher on notice and other
15 teachers may have gotten upset with me but I couldn't discuss
16 it with them. So, of course, the teachers are hearing one
17 side, and they couldn't hear my side. And people were upset
18 with me because I couldn't talk to them about what was going
19 on.

20 And for some reason it hit me that day: They can't
21 talk about this; it's a personnel matter, and I know they
22 can't give an answer. And I thought, well, maybe somewhere
23 along the way, as this goes on, it will come out what the
24 reason was.

25 And so at that point I started thinking that, you

1 know, this -- I'm kind of understanding how difficult it must
2 be to be on the board, to serve on the board, and that's again
3 when I started thinking -- I had not made the decision then to
4 run for the board, but it just, yeah, kind of changed my
5 thinking about what was going on with Art McCoy.

6 Q Now that you're on the board, do you believe that -- and
7 you know the members of the board, at least some of them.
8 Some of the same school board members are on the board now
9 that were then on then; is that right?

10 A Yes.

11 Q Do you believe that race was involved in the board's
12 decision with regard to Dr. McCoy?

13 A In what sense do you mean? I mean --

14 Q Did they -- is it your belief that a white school board
15 terminated a superintendent because he was black?

16 A No.

17 Q Or put on suspension a school superintendent because he
18 was black?

19 A No.

20 Q How much money did you raise for your campaign in 2014?

21 A Do you mean the committee or myself?

22 Q Well, let's talk about both. Do you know how much the
23 committee raised?

24 A Gosh, I know I have to do the paperwork and turn in all
25 the -- and the best that I can remember is approximately \$6-

1 to \$7,000 maybe.

2 Q How much did you put in of your own money?

3 A Approximately 200.

4 Q And when Grade A for Change was recruiting candidates,
5 was it clear to the candidates that there would be a large
6 output of money personally, or what was relayed as far as the
7 cost of returning?

8 A As I recall, one of the things that I can remember that,
9 when we started, was that as a slate not only would they be
10 helping us, supporting us by getting out the information that
11 needed to get out like the yard signs and the pamphlets and
12 the cards, that they would be paying for those things. And I
13 thought it was a wonderful opportunity for anyone who wanted
14 to run, especially an African American who wanted to run.
15 This was a very good opportunity for them to take advantage of
16 that because the costs of running a campaign could be
17 enormous, but with them supporting us it would probably not
18 cost as much out of pocket as it would if you were running
19 individually.

20 Q Did you seek the endorsement of the FFNEA when you --
21 after you filed to run for board?

22 A Yes.

23 Q Do you remember were you here when Mr. Green testified
24 about the process that the NEA has in place for endorsements?

25 A Yes.

1 Q Is that your experience as well?

2 A Yes.

3 Q He described it accurately?

4 A Yes.

5 Q And you applied for their endorsement, and you went
6 through the interview process?

7 A Yes, I did.

8 Q What was the racial make-up of the interview committee,
9 if you remember, in 2014?

10 A I would say 50/50 pretty much. I remember looking around
11 the room and saying, yeah, this is a pretty integrated group
12 of people to interview -- to interview me.

13 Q Were you endorsed by the FFNEA?

14 A No.

15 Q Were you surprised that you weren't endorsed by the
16 FFNEA?

17 A No.

18 Q Why not?

19 A Well, number one, I'm a former principal, and I've sat on
20 the opposite side of NEA in many -- not many, but in some
21 cases. And there were situations where I've had to make some
22 decisions about teachers who may -- teachers who did not need
23 to be teaching.

24 And their job is to protect their teachers, and my
25 job is to protect students. And so I just kind of knew going

1 in there I was one of the -- there's not very many principals
2 who have gotten a tenured teacher released, and I did; so, no,
3 I did not think I would be endorsed, but I wanted the
4 experience.

5 Q Do you believe that your race had anything to do with
6 whether or not you were endorsed?

7 A No. No.

8 Q Did the FFNEA endorse any of the candidates on your
9 slate?

10 A Yes.

11 Q Who did they endorse?

12 A James Savala.

13 Q Did you think that with an FFNEA endorsement that it
14 was -- that you would absolutely win?

15 A No.

16 Q Did you think that if you wouldn't get their endorsement
17 that you wouldn't win?

18 A No.

19 Q Can you tell me did you know what the benefits would have
20 been if you had been endorsed by the FFNEA? Were you aware of
21 what those benefits were prior to going through the process?

22 A Prior to, no, I did not know. I didn't know
23 specifically. I did know that they provided some help
24 financially.

25 Q Let's go back in time to the 2011 election. I know you

1 weren't a candidate, but you did live in the school district,
2 correct?

3 A Correct.

4 Q We're going to come back to your election in a little
5 bit, but do you remember if there was any sort of
6 anti-incumbent sentiment during that election?

7 A Absolutely.

8 Q Why?

9 A Because insurance was offered to Jeff Spiegel and his
10 wife for life.

11 Q How did that make you feel?

12 A I was quite angry.

13 Q Why?

14 A Because I paid almost \$700 a month for insurance, and his
15 wife never worked in the district. He made twice as much
16 money as I did. And I did not understand why that decision
17 was made.

18 Q So I think we heard that the incumbents running for
19 reelection were Dr. Doris Graham, Jim Clark, and Les Lentz.
20 Correct?

21 A Correct.

22 Q And were you surprised when none of the incumbents were
23 reelected?

24 A Not at all.

25 Q Did you vote for any of the incumbents that year?

1 A I did not.

2 Q Do you remember who the officers were of the board when
3 the board made the decision to give that insurance to the
4 superintendent and his wife?

5 A Oh, gosh. I'm thinking it was Chuck Henson and may have
6 been Doris Graham. I'm not really sure; so I won't say.

7 Q Do you know for sure who was president?

8 A I think it was Chuck Henson.

9 Q Prior to 2011, had you supported Dr. Graham in her
10 elections?

11 A Always.

12 Q What do you think of Dr. Graham?

13 A I'm getting emotional. I shouldn't do that. I don't
14 know why. She's a wonderful, wonderful person despite the
15 fact she's a Delta. We have -- we're different sororities.
16 But other than that, I just -- I think the world of her.
17 She's a very compassionate person, very outgoing, very loving,
18 funny. And we can do this back and forth, and we understand
19 each other, I think. She's pretty good -- she's okay.

20 Q So it had to be -- you had to be pretty upset not to vote
21 for her in 2011; would you agree?

22 A Yeah. Yeah.

23 Q Do voters still talk about that issue?

24 A Yes. I still talk about it.

25 Q So you take other reasons into -- well, what factors do

1 you take when -- into when you decide who to vote for for
2 school board?

3 A Depending on if it's a new candidate or incumbent, just
4 knowing -- I'll start with a new person. One of the things
5 that is important to me -- and I will tell you I did not -- I
6 was not as active with the school board in the past as -- I
7 just wasn't, and I just have to say that. I knew a lot about
8 it because I worked for the district. And once I retired, as
9 I said earlier, I had some health issues, and I kind of did
10 not spend a lot of time being active with school board issues
11 and things like that. Ask me the question again because I
12 just kind of got off track there a little bit.

13 Q What are important criteria for you when you decide who
14 to support for school board?

15 A The campaign that they're running on. For example, if
16 they're running on -- first of all, I want someone who is
17 child centered. If I'm hearing more about their concerns
18 about children and what we want for our children in terms of
19 accomplishments, accreditation, safety for kids, discipline,
20 those issues, those issues are important to me.

21 Especially in our district where we have
22 predominantly African-American students who are failing, I
23 want to hear what it is they plan to do or want to do or would
24 request of the superintendent to do to help students become
25 successful.

1 Q Do you always consider race when you decide who to
2 support?

3 A No, I don't.

4 Q Is it fair to -- well, if there's an African-American
5 candidate on the ballot, do you always vote for that
6 candidate?

7 A Again, it depends on what the candidate says, what the
8 candidate does, what the candidate says. And it doesn't
9 matter to me if it's black, white, green, or red.

10 Q So let's go back to your 2014 election. Did you attend
11 any candidate forums during your campaign leading up to your
12 election?

13 A Yes.

14 Q Do you remember how many there were?

15 A Too many. Gosh, there were two at churches, one at UMSL,
16 University of Missouri-St. Louis. We had one at Commons Lane
17 Elementary. There was one at Ferguson, I think. Not
18 Ferguson. I'm sorry. McCluer. And I can't remember all of
19 them, but I attended -- oh, the Republican and also the
20 Democratic groups that are in Ferguson and Florissant.

21 Q Were all of the candidates invited to all of these
22 forums?

23 A Yes.

24 Q Did all of the candidates show up to all of the forums?

25 A No.

1 Q Did you ever arrive late to any of these forums?

2 A No, not that I can remember.

3 Q What other campaign activity did you participate in?

4 A Well, one of the things that was so great about Grade A
5 for Change is that they provided opportunities for us to meet
6 with the public. We met weekly. We met at the Ferguson
7 Library. Everyone who wanted to come and ask us questions,
8 you know, about our campaign or what we wanted to do were
9 invited to come. They talked with us about strategies. We
10 met at Steak 'N Shake. We met at McDonald's. We met a lot.

11 And at first it seemed like a lot to me, but -- or
12 too much for me, but it was invaluable. Those meetings were
13 invaluable. And Grade A for Change offered so many
14 opportunities for us to learn.

15 We also went to Susan Shear, who did a -- she did a
16 class on running for the board. We went to the -- oh, I'm
17 trying to think of the office. I'll come back to it. But,
18 yeah, we had many opportunities where we were given valuable
19 information and support.

20 Q Did all the members of your slate take advantage of all
21 these opportunities?

22 A No.

23 Q Did you take advantage of all those opportunities?

24 A I would say 99.9 percent of those.

25 Q What percentage would you say Mr. Savala took part in?

1 A 75 maybe, 80.

2 Q What percentage did Mr. Johnson take part in?

3 A 50, 60 maybe.

4 Q What did you do that the other two candidates on your
5 slate did not do?

6 A I think the difference between me and the other two
7 candidates is that I was consistent and I made sure that I
8 made all of the -- as many meetings as I could. I listened to
9 my campaign manager. I did the footwork. I did the door to
10 door. I did the League of Women Voters thing, application or
11 survey.

12 Q Did the other two candidates do that?

13 A No. No.

14 Q Either one of them do that?

15 A As I recall, both of them did not do it.

16 Q And what was the result of filling out that survey from
17 the League of Women Voters?

18 A What was the result of it?

19 Q Uh-huh.

20 A I'm not sure what you mean. Once I did the survey, the
21 survey was put in the *Post*, and so it kind of went out all
22 over the city.

23 Q Do you believe that there's a lot of readers of the *Post*
24 in the Ferguson-Florissant School District?

25 A Yes.

1 Q What do you think the result was of -- would be the
2 result of not completing that questionnaire and having that in
3 the paper?

4 A Well, you know, you never know exactly how that's going
5 to affect your campaign, but I can't see -- I thought it was
6 one of the biggest things that we could have done to get the
7 word out about -- they ask so many questions about you
8 personally and about your background and what your campaign
9 was about. I thought it was invaluable. So I think it was a
10 big one, but I can't tell you specifically, you know, how it
11 might have helped, but I didn't want to take a chance on not
12 doing it.

13 Q Did you ever talk on your phone during a candidate forum?

14 A No.

15 Q What do you think the result is of talking on the phone
16 during a forum could be?

17 A That people might not take you seriously or that you may
18 not be paying attention to them or you may be somewhere else
19 and not really there in the moment with them.

20 Q Mr. Johnson in his testimony yesterday stated that he was
21 criticized for being too supportive of the student transfer
22 program with regard to student transfers from unaccredited
23 school districts. You were at all the forums. Did you ever
24 hear such a criticism of him?

25 A No. I did not hear that.

1 Q Was the transfer issue an issue in your campaign?

2 A Yes, it was an issue, but it's not -- I think the problem
3 was how you say it, not so much that you say it. And I think
4 that's what the issue was, might have been or could have been
5 with the other candidates.

6 Q Do you think that the transfer issue was a legitimate
7 concern of the voters?

8 A Yes. Yes.

9 Q Do you think it was appropriate for the transfer issue to
10 be discussed by a candidate?

11 A Yes.

12 Q Do you know the approximate racial breakdown of the
13 student population in Normandy School District?

14 A Approximately 95 percent to 98 percent.

15 Q What's the breakdown of students in Ferguson-Florissant
16 School District?

17 A 80 percent African-American. Students you mean, right?

18 Q Right.

19 A Yes, 80 percent African American.

20 Q Does it make sense that transferring of African-American
21 students into a majority African-American school district
22 would be a concern? Was it a concern of yours?

23 A No.

24 Q Did you ever hear anybody challenge Mr. Johnson with
25 regard to whether he rented or owned his home?

1 A No.

2 Q Was the fact that students were transferring from an
3 unaccredited school district into the Ferguson-Florissant
4 School District a concern for you?

5 A In what way? I mean --

6 Q As far as accreditation, race -- any of the issues that
7 have been brought up so far in this trial.

8 A Okay. My concern was for the children and how they felt
9 coming into another district and if they were going to be
10 accepted. That was my concern.

11 Q Has there been any problem with the acceptance of kids
12 from other school districts in the Ferguson-Florissant
13 District?

14 A No. Wait a minute. What do you mean by that? Do you
15 mean by --

16 Q Whatever your concern was.

17 A For me?

18 Q Yes.

19 A No.

20 Q When you ran, did you believe that you had support from
21 white voters in the district?

22 A Yes.

23 Q How did you know?

24 A Many of my former parents said they would support me. My
25 neighbors were supportive. They all put signs in their yards.

1 As a matter of fact, we probably had too many signs in our
2 neighborhood. But just from conversations after forums; so
3 yes, yes.

4 Q Do you believe that you had significant support from
5 white voters?

6 A I think so.

7 Q Do you believe you had support from African-American
8 voters in your election?

9 A Yes.

10 Q How do you know that?

11 A Because my family voted. Well, yes, because, again, my
12 neighbors -- we have a very integrated neighborhood -- and
13 going to door to door. And I really didn't have to because I
14 knew my neighbors anyway, many of them anyway. And again from
15 forums and church. My church was very supportive of me.

16 Q Do you have any concerns about the school district's
17 electoral system being changed to a single-member district
18 system rather than an at-large system?

19 A I've been thinking about that a lot, and the one thing
20 that bothers me with this single-member district is it makes
21 me feel like we're going backwards.

22 Q In what way?

23 A Because it's like segregating us. If you're putting --
24 you're looking at groups of people like, for example, in
25 Berkeley -- and I worked in Berkeley. Home and school was in

1 Berkeley. That's a predominantly African-American group or
2 the group in Normandy -- whatever. It's like you're putting
3 pockets of African-American people -- it's like segregating
4 all over again. It's like in '75 when they made -- when they
5 integrated the school districts, they got away from that. So
6 to me, it seems like we're going backwards if we did that.

7 Q Why do you prefer an at-large system?

8 A Because when you're on the board, your dedication should
9 be to the entire school district, not just your pocket, not
10 just your schools that are in this area. And I think if you
11 get on -- if you get to the system, you're going to be sitting
12 at meetings where people are going to be fighting for their
13 piece of the pie rather than sharing the pie. And if we do
14 that, then I just -- I don't know what kind of work we can get
15 done if we're segregated.

16 Q Do you think it would be a good idea to have all seven
17 board members up for election at the same time?

18 A Well, no.

19 Q Why not?

20 A Because it would take us a year just to be able to go
21 through the -- understand the governance and what we need to
22 do as a working board, what has happened in the past, what
23 history has gone -- what has happened in the history of our
24 school boards. I know as a new person on the board last year
25 it was very difficult for me to -- I mean, for almost a year I

1 had to listen and learn, and I can't -- I could not see seven
2 of me sitting at the table and trying to make decisions and
3 not even knowing how to run a school board meeting. So, no.
4 I think you need some people who have had experience.

5 Q Can you think of any negatives to staggered terms?

6 A No.

7 Q Currently elections are in April rather than August,
8 November, any other month. Which month do you think is
9 better?

10 A For me, April works best because I can tell you from my
11 experience, after running for the board, that's a lot of work.
12 If you come in in November, you're in the middle of the school
13 district -- I mean of the middle of the school year. It's
14 like coming in and going, okay, what do we do next?

15 In April it gave us time -- it gave me time -- to
16 meet with the board -- the school year is ending, summer is
17 coming. It's enough time for you to kind of get more
18 acclimated to what the board does and how it works. And also
19 the training that comes along with it through Missouri School
20 Board Association -- that timing and that training is
21 imperative for a school board member. It's very valuable.

22 Doing it in November, again, I think you lose time,
23 and we don't have time. You know, there's an urgency right
24 now, and we talked about this on our board about how important
25 it -- we don't have time to lose. So I think having it in

1 April gives that transition time, gives you more transition
2 time to get more acclimated to what the expectations are for
3 you serving on the board.

4 Q What's your opinion regarding whether or not
5 African-American representation on the board will increase or
6 decrease under the current at-large system?

7 A You know, I'm not sure about that. I'm not sure about
8 the having the small areas, because you could still have a
9 group or like a Berkeley, and you can have a white person run
10 in Berkeley. There are white people still in Berkeley,
11 believe it or not, and there are white people in all of these
12 other areas. No matter how you slice it or cut it up, you can
13 still have an all-white board. It's still possible. And
14 besides that, it's a state law for us. So I just don't -- I
15 don't see how making that change is going to make that big of
16 a difference. I really don't.

17 I just see that we have, all of us, any one of us,
18 black, white, or whatever, we have an opportunity, if we want
19 to, to run for the board. Yeah, there's some hindrances which
20 may be financial, but maybe -- it wasn't for me, it wasn't for
21 our slate because we had a wonderful group who helped us. So
22 no. I just -- I just don't see that changing right now is the
23 best for the district.

24 Q Let's talk just a minute about the 2015 election. Who
25 was elected last year?

1 A Brian Scott Ebert, who was an incumbent, and a Dr.
2 Courtney Graves.

3 Q What kind of campaign did Dr. Graves run?

4 A Dr. Graves was a very busy lady. She was very active.
5 She was very -- she was -- all of the events that I went to as
6 a board member, she was there. She attended the board
7 meetings. She spoke to parents. She was at the other schools
8 when schools had PTO meetings. I mean, she was just very,
9 very visible in the district, and she spoke well. Her
10 forums -- she was prepared. She was very prepared.

11 Q As far as you're aware, to the best of your knowledge,
12 was this lawsuit in any way a factor in her election?

13 A No. Courtney worked for that position. She earned it.

14 Q Do you hear this lawsuit discussed?

15 A Not very much at all but only because I'm on the board.
16 I will tell you my husband, who lives in the house with me,
17 until I told him about it, he hadn't heard about it.

18 Q How did the events involving Michael Brown affect the
19 election?

20 A I'm not really sure. As a matter of fact, one of the
21 things that I thought, if it was going to affect the election
22 in any way, that more African Americans will come out and
23 apply for the board, but I didn't see that that happened.

24 Q Did any voters tell you that they were going to vote one
25 way or the other because of the Michael Brown protests?

1 A Never heard that.

2 Q Did the Michael Brown shooting and protests change your
3 vote in any way?

4 A No.

5 Q Do you vote?

6 A Yes.

7 Q Do you feel like you can participate in the political
8 process without interference?

9 A Yes.

10 Q Do you feel like as an African American you have the same
11 ability to participate as anyone else in the school district?

12 A Yes.

13 Q Do you feel like you have the opportunity to elect the
14 candidate of your choice?

15 A Yes.

16 Q Will you run for office again? Am I putting you on the
17 spot?

18 A I would do it again. I would do it all over again, yes.

19 Q So the board recently hired a new superintendent. Were
20 you on the board when he was hired?

21 A Yes.

22 Q Do you believe the board hired the best person to address
23 the issues of disparities within the school district?

24 A Yes. And the board worked very, very hard making that
25 selection.

1 Q What was the racial make-up of the board when Dr. Davis
2 was hired?

3 A I was the only African-American board member.

4 Q As the only African-American board member, do you believe
5 that, as Mr. Hudson said earlier, that the board was intent on
6 hiring an African American no matter what?

7 A What I can tell you is, when we had our conversations,
8 that was not the intent at all. The only thing we wanted to
9 do was get the best person for the position.

10 Q Do you believe you did that?

11 A Absolutely.

12 Q What do you think of Dr. Davis so far?

13 A He walks on water.

14 Q What's the board's relationship like with Dr. Davis?

15 A They -- I tell you what. Dr. Davis is -- I think that
16 the board, when we first selected Dr. Davis, some of the board
17 members wanted to test him a little bit. And he is extremely
18 strong in where he stands about student achievement and what
19 needs to be done to get us on the right track. And because of
20 him being able to stand up to some of the suggestions of board
21 members and to be able to say to them "This is what I have in
22 mind" and to strongly say it, he has won the respect of the
23 board, and the board is very supportive of him. We're backing
24 him. And I can't speak for the board -- that's one of the
25 things that we learned in our training -- but I can say that I

1 would say that 100 percent of us are behind him 100 percent.

2 MS. ORMSBY: Thank you. I don't have anything
3 further. Oh, wait a minute. I got to ask.

4 THE COURT: Apparently, you do. You just don't know
5 it.

6 Q (BY MS. ORMSBY) Do you see any differences between the
7 Grade A for Change slate that you were on and the candidates
8 that are endorsed by the FFNEA? As far as slating, do you
9 think it's the same sort of slate?

10 A No.

11 Q Why not?

12 A Not at all. Grade A for Change -- I can't speak enough
13 for what they did for me in terms of supporting me, not just
14 financially and doing the signs and doing the pamphlets and
15 making the phone calls, but they taught me how to be a
16 candidate. They taught me the things that I really needed to
17 do to win votes. They were supportive. When I was tired and
18 when I really wanted to just kind of, uh, they were behind me
19 and they supported me.

20 I would say for the FFNEA their support was tangible
21 in that you got the finances -- not very much -- and you got
22 the signs and got their endorsement, but I would take Grade A
23 for Change endorsement over NEA's endorsement any day.

24 Q Who is your -- did you have a campaign manager?

25 A Yes.

1 Q Who was it?

2 A Judy Shaw.

3 Q Is she in the courtroom today?

4 A She's -- I'm afraid to look at her. I'm still afraid of
5 her.

6 THE COURT: So she was a good campaign manager if
7 you're afraid of her.

8 THE WITNESS: Yes. Very dedicated. Extremely
9 dedicated.

10 Q Are you able to represent and learn about the interests
11 or concerns of residents in the Ferguson-Florissant School
12 District even though they don't live near you?

13 A Yes.

14 Q How? Why?

15 A As a board member, we have, first of all, a
16 responsibility to get out and to know who our constituents are
17 and to meet with them, to talk with them, to help them through
18 a difficult situation, but -- and we get those phone calls.
19 What some people think is that the board does all this work
20 and that it's my responsibility for -- okay.

21 Say, for example, your child gets suspended and
22 someone calls me and says, "My kid's suspended. Would you
23 help me out?" They don't understand that's not the
24 responsibility of the board. Our responsibility is to hire
25 the superintendent and make sure that policies and procedures

1 are followed and that the superintendent does that.

2 And so what I'm learning or teaching people about the
3 board is that is what our responsibility is. And through the
4 superintendent we're hoping that what he does will effect
5 change, will help those parents who are calling me about their
6 student who's being suspended and other things. And so I
7 think sometimes people just don't understand what a board
8 member does and what a board does.

9 Q Do you think that the board -- do you think that all the
10 geographic areas of the school district are represented by the
11 school board?

12 A Speaking for myself, yes. Every single school, every
13 school in the Ferguson-Florissant School District, I feel
14 responsible for. Every one of them.

15 MS. ORMSBY: I have nothing further.

16 THE COURT: Cross-examination?

17 MS. EBENSTEIN: Somewhat briefly, Your Honor.

18 THE COURT: Are you ready?

19 MS. ORMSBY: Yes, sir.

20 THE COURT: You may proceed.

21 MS. EBENSTEIN: Thank you.

22 **CROSS-EXAMINATION**

23 **BY MS. EBENSTEIN:**

24 Q Good afternoon, Dr. Thurman.

25 A Hi.

1 Q How are you? I'm Julie Ebenstein. I'm counsel for the
2 plaintiffs. We met at your deposition.

3 We heard testimony earlier this week from Frank Green
4 that the FFNEA's reason for not endorsing you is that you were
5 out of touch. Do you agree that you were too out of touch
6 with the district to be endorsed by the FFNEA?

7 A No.

8 Q And you would agree, wouldn't you, that there are special
9 concerns that affect the African-American community more than
10 the white community? Wouldn't you?

11 A In Ferguson-Florissant?

12 Q Yes.

13 A Yes.

14 Q And that these include disparities in achievement?

15 A Yes.

16 Q And in the way that African-American students are
17 disproportionately disciplined?

18 A Yes.

19 Q And in different schools resources allocated for
20 north-side schools as opposed to south-side schools?

21 A Yes.

22 Q And you're aware, are you not, that there is a history of
23 racial discrimination in the state of Missouri?

24 A Yes.

25 Q That schools used to be racially segregated?

1 A Yes.

2 Q That playgrounds, libraries, and public parks were also
3 segregated?

4 A Yes.

5 Q That racially restrictive housing covenants and zoning
6 restrictions were in place in the St. Louis area?

7 A Yes.

8 Q And you would agree, would you not, that there are
9 ongoing effects of the history of discrimination in St. Louis
10 County in terms of housing, education, and a number of other
11 issues?

12 A Yes.

13 Q And would you agree that there are disparities in home
14 ownership, employment, income, and poverty levels that still
15 exist in the FFSD?

16 A Yes.

17 Q You testified a moment ago that one job of the board is
18 to make people aware that there is achievement gap by race; is
19 that correct?

20 A To make people aware?

21 Q I believe that's what you said earlier.

22 MS. ORMSBY: I object. I don't think that represents
23 her testimony.

24 Q Okay. Do you think someone could make other people aware
25 of either discrimination or an achievement gap if they

1 themselves had no idea that that achievement gap existed?

2 A Well, no.

3 Q I believe you said a moment ago -- and I'm sure counsel
4 will correct me if I'm wrong -- that you prefer at-large
5 elections because board members represent the entire district,
6 correct?

7 A Yes.

8 Q But people asked you to run for the board because they
9 felt the school board didn't represent African-American
10 neighborhoods; is that correct?

11 A I don't think that's the only reason they asked me to run
12 for the board.

13 Q Is that one of the reasons they asked you to run for the
14 board?

15 A Could have been.

16 Q Do you recall when we met in June, at your deposition, I
17 asked you and you told me "And why do you believe people were
18 asking African Americans to run for the school board?" and you
19 answered, "Because the school board didn't represent our
20 neighborhood"?

21 A Uh-huh. Yes.

22 Q Do you think it's important for you, as an African
23 American, to be on the board?

24 A Yes.

25 Q Do you know that in 2014 -- or are you aware that in 2014

1 you only received 8.4 percent of the white vote, of votes from
2 white voters?

3 A I did not remember that.

4 Q And if you had known that less than one in ten white
5 voters voted for you, would you think that that was a
6 significant level of support among white voters?

7 A Say that again.

8 Q If you were aware that less than one in ten white voters
9 voted for you, would you consider that a significant amount of
10 support from white voters? One in ten?

11 A No.

12 Q Are you aware of any African American who has been
13 elected to the board in the last ten years who does not have a
14 Ph.D.?

15 A In the last ten years? Chuck Henson, I think. And
16 Gwendolyn Thomas. I'm not sure if she did or not, but I don't
17 think so.

18 Q Do you know of any white members on the board who have a
19 Ph.D. currently?

20 A Currently?

21 Q Uh-huh.

22 A No.

23 Q Excuse me for a minute while I consult with my
24 co-counsel.

25 You testified earlier that, after attending the

1 November 2013 meeting related to Dr. McCoy, you changed your
2 mind as to whether or not the board was correct in suspending
3 him; is that right?

4 A No. That's not what I said.

5 MS. EBENSTEIN: Okay. No further questions. Thank
6 you, Dr. Thurman.

7 THE WITNESS: Uh-huh.

8 THE COURT: Any redirect?

9 MS. ORMSBY: No, Your Honor.

10 THE COURT: Thank you, ma'am. You may step down.

11 We'll take a 15-minute -- let's say 20-minute recess.
12 We'll reconvene at 3:50. Who's next?

13 MS. ORMSBY: Dr. Rodden.

14 THE COURT: Okay.

15 **(COURT RECESSED FROM 3:30 PM UNTIL 3:52 PM.)**

16 THE COURT: If you would call your next witness,
17 please.

18 MS. ORMSBY: Call Dr. Jonathan Rodden.

19 THE COURT: If you would step forward, sir, and be
20 sworn.

21 **(WITNESS SWORN BY THE CLERK.)**

22 THE COURT: Are we ready?

23 MR. HO: Yes, your Honor.

24 THE COURT: Okay. You may proceed.

25 **JONATHAN RODDEN,**

1 **HAVING BEEN FIRST DULY SWORN, WAS EXAMINED AND TESTIFIED AS**
2 **FOLLOWS:**

3 **DIRECT EXAMINATION**

4 **BY MS. ORMSBY:**

5 Q Would you state your full name for the record, please?

6 A Jonathan Rodden.

7 Q Dr. Rodden, where were you born and raised?

8 A I was born in St. Louis, Missouri, and I was raised in
9 Florissant, Missouri.

10 Q So I'll ask the proverbial St. Louis question: Where did
11 you go to high school?

12 A I'm a proud graduate of McCluer North Senior High School
13 in Florissant, Missouri.

14 Q Is that in the Ferguson-Florissant School District?

15 A It is.

16 Q Did you graduate with any honors from McCluer North?

17 A I was salutatorian. It was close, but I came in second.

18 Q Did you participate in any athletics?

19 A I did. I played on the varsity soccer team, and I was on
20 a swim team.

21 Q Were you involved in any other activities that were
22 located in other places of the school district?

23 A Yes. I was on something called the Ferguson-Florissant
24 Youth Advisory Commission when I was in high school, and I was
25 also very involved in the municipal swim league. So I started

1 out swimming on the Ferguson swim team and, after a couple
2 summers there, was recruited by a coach in Berkeley, who I had
3 a lot of respect for; so I ended up on the Berkeley swim team.
4 So I was one of those white people hanging around in Berkeley,
5 I guess. I spent a couple summers there, and so I kind of got
6 to know every part of the district.

7 Q Does your family still live in the area?

8 A They do.

9 Q Were you involved in any other extracurricular activities
10 when you were in Ferguson-Florissant School District?

11 A Yes. I was very involved. In addition to swimming, I
12 also was very involved in music and played in different bands
13 and orchestras around the district.

14 Q Have you continued to keep in touch with what's going on
15 in the area?

16 A I have. I think that's something that social media is
17 helpful with, and I kind of keep up on news from the
18 Ferguson-Florissant area.

19 Q After you graduated from McCluer North -- which was in
20 what year?

21 A 1989.

22 Q Did you go to college?

23 A I did. I went to the University of Michigan in Ann
24 Arbor.

25 Q What did you study there?

1 A After some time in music and in doing some statistics and
2 some economics, I landed on political science, and that's what
3 I've been doing ever since.

4 Q And how long were you at University of Michigan?

5 A I was there four years.

6 Q You graduated when?

7 A I believe it was 1993.

8 Q Other than political science, was there any other special
9 area of study?

10 A Economics and statistics and some work in demography.

11 Q Did you get any special recognitions or awards while at
12 University of Michigan?

13 A I was chosen as the Most Outstanding Student by the
14 Michigan Association of Governing Boards.

15 Q Did you spend your summers back in Florissant?

16 A I did, yes.

17 Q What did you do during your summers?

18 A I worked in the district as a lifeguard. I also worked
19 downtown at a law firm called Husch Eppenberger. I believe
20 they have now moved to Clayton. And then in the evenings I
21 worked -- I went down to Chippewa to scoop frozen custard at
22 my uncle's frozen custard stand.

23 Q What's the name of that frozen custard stand?

24 A Ted Drewes.

25 Q And what did you do at Husch & Eppenberger?

1 A I was a mail boy. I delivered the mail to the attorneys.

2 Q And in 1993, after you graduated from University of
3 Michigan, what did you do next?

4 A I went for a year on a Fulbright scholarship to the
5 University of Leipzig in Germany.

6 Q And what did you study there?

7 A Political science.

8 Q And after your year as a Fulbright Scholar, what happened
9 next?

10 A I started graduate school at Yale University in a Ph.D.
11 program in political science.

12 Q Anything more specific than political science? Was there
13 a specific area within political science that you studied?

14 A Yes. My work was focused on political economy, a lot of
15 work on economics and statistics, voting behavior, and
16 especially institutions of representation.

17 Q So you got your doctorate from Yale?

18 A Yes.

19 Q And when was that?

20 A I believe it was in 2000.

21 Q What was your dissertation on?

22 A It had to do with the fiscal relationship between central
23 governments, state governments, and lower-level governments,
24 municipal governments around the world, focusing in part on
25 the United States but also on several other countries.

1 Q And was your dissertation well accepted?

2 A It was.

3 Q All right. After you got your Ph.D., what did you do
4 next?

5 A I received my first -- I started my first job at
6 Massachusetts Institute of Technology, the year I finished my
7 Ph.D., as an assistant professor.

8 Q What did you teach while you were an assistant professor
9 at MIT?

10 A A mixture of the things that I've been teaching ever
11 since: Courses on representation, elections, some methods
12 courses on statistics, and courses on comparative and American
13 politics.

14 Q How long were you at MIT?

15 A I believe I was there six years.

16 Q Were you an assistant professor the entire time?

17 A No. First, I became an associate professor after two or
18 three years, and then I received tenure, I think, in my --
19 beginning of my sixth year.

20 Q How old were you when you received tenure at MIT?

21 A I believe I was 35.

22 Q And did you receive any special honors at MIT?

23 A I had an endowed chair, a named chair, the Ford
24 Development Chair.

25 Q What does it mean to have an endowed chair?

1 A It means you have someone else's name behind your name on
2 your letterhead, I guess, and some resources, some research
3 funds.

4 Q Is it considered an honor to have --

5 A Yes.

6 Q What did you do then?

7 A As soon as I received tenure at MIT, I was offered a
8 fellowship for a year at the Center for Advanced Study in the
9 Behavioral Sciences in Palo Alto, and I moved my family out
10 there for a year of sabbatical.

11 Q What is a fellowship at the Center for Advanced Study in
12 Behavioral Sciences?

13 A It is an institution that was started in the 1950s by the
14 Ford Foundation as a place for scholars to go and try to spend
15 a year away from teaching to focus on their research.

16 Q And that's what you did?

17 A Yes.

18 Q So after a year at the Advanced Study in Behavioral
19 Sciences, what did you do next?

20 A While I was there, I was recruited by Stanford, and it
21 was a difficult decision, but I decided to make the move to
22 Stanford.

23 Q Do you remember what year that was in?

24 A It must have been either 2006 or '07.

25 Q Were you hired -- what capacity were you hired?

1 A I was hired as a full professor.

2 Q What's your current title?

3 A I'm a Professor of Political Science at Stanford.

4 Q What classes do you teach at Stanford?

5 A I teach some of the courses that I've always been
6 teaching on representation and political systems, institutions
7 of representation. In particular, I do some work on election
8 law and recently have started teaching more intensively in
9 political methodology related to geographic information
10 systems. It's probably a term I'll use a couple of times,
11 GIS. So I work a lot with geo-spatial data. That means
12 fine-grained census data at the level of census blocks and
13 block groups and tracts and so forth and putting that together
14 with other forms of data that can be geo-located. Lots of
15 nice things we can learn from that kind of analysis.

16 Q How often do you analyze and work with census data and
17 election data?

18 A Pretty much every day that I'm not in the classroom
19 teaching. This is the kind of thing that I do every day.

20 Q Do you supervise any graduate students?

21 A I do. I have a large number of graduate students, maybe
22 on the order of 15 right now.

23 Q Do you run any other departments or centers or have any
24 other administrative positions?

25 A Yes. A few years ago I started something called the

1 Stanford Spatial Social Science Lab, and this is related to
2 what I was just talking about. It's a center for geo-spatial
3 analysis in the social sciences. I've brought together a
4 group of faculty members from my department, political
5 science, but also from the Graduate School of Business, from
6 economics, and from the anthropology department. Also we have
7 some historians who are interested in this kind of work. And
8 we are working with various kinds of geo-spatial data, making
9 maps and doing spatial analysis. We do some teaching
10 workshops in various forms of spatial quantitative analysis.

11 Q Do you work with any other universities in that capacity?

12 A Yes. We have a partnership with Harvard University, and
13 we've put together a resource that -- and it's kind of an
14 ongoing resource, but we have got a project where a group from
15 Harvard has collected all of the precinct-level election
16 results for lots of different offices at higher and lower
17 levels of government. We've put together the precinct-level
18 election results which are -- it's very small, fine-grained
19 level of analysis. We've put together those results, and then
20 the team at Stanford took what the Harvard group collected,
21 and we've been able to map all of those precinct-level
22 election results and put them together with census geography
23 from 2010. And so we have the census data at the level of
24 blocks merged together with the precinct-level data so that we
25 can analyze patterns of voting by party and by any census

1 characteristic we might want to look at, including race.

2 And so we have all of this available on the internet
3 in an online interactive format so anyone can go and can kind
4 of zoom into their neighborhood and analyze the political
5 characteristics and social characteristics and can just
6 spatially map lots of interesting patterns. And we also have
7 the data available for download, and it's been a very popular
8 resource. Lots of social scientist journalists, you know,
9 economists have been using the data for lots of analysis.

10 That's the kind of thing we do. We produce data. We
11 produce various kinds of resources for other scholars to use,
12 including online maps, and we're also now expanding that same
13 kind of work to lots of other countries. So we hope to
14 eventually have kind of a global resource for census data and
15 political data.

16 Q So before this case you looked at -- had you looked at
17 voting behavior based on race and ethnicity?

18 A Yes. This is something that's come up quite a bit in my
19 research.

20 Q And did you utilize the same data and methodologies that
21 you utilized in this case?

22 A Yes. This case was a very nice fit for some of the
23 substantive questions I've been interested in and also many of
24 the techniques I've been developing. It was in some ways well
25 timed given the research I've been doing.

1 Q Have you taught any courses on the Voting Rights Act?

2 A I've never taught a course on the Voting Rights Act.
3 I've been including some materials in my courses in recent
4 times, but I've been talking to people at the Stanford Law
5 School and hope to develop a course in the near future.

6 Q Let's pull up Plaintiffs' Exhibit 60. Is this your
7 vitae?

8 A Yes.

9 Q And let's look at the publications. And it's in your
10 book as well. It's on the screen and on your book, so
11 whichever is clearer to see. Let's look at your publication
12 list. What is *Hamilton's Paradox: The Promise and Peril of*
13 *Fiscal Federalism*?

14 A That is a book that emerged from that dissertation
15 project that I described earlier, and it has to do with fiscal
16 relations between governments, focusing a lot on state and
17 local governments around the world, and particular in the
18 United States.

19 Q Did it win any awards?

20 A It was selected as the Best Book award in Comparative
21 Politics in 2007.

22 Q Let's look at the other books on your list. Are there
23 any books that are particularly relevant to this case?

24 A Yes. There is a book that I've been working on for a
25 long time and haven't quite finished, haven't convinced myself

1 to send it off to the publisher yet, but it's called *The Long*
2 *Shadow of Industrial Revolution: Political Geography and the*
3 *Representation of the Left.*

4 And this is a book that focuses on -- given some of
5 what I just described about the geography of support for
6 political parties and some of the new ways we have to collect
7 data on that and understand it at a very low level of
8 analysis, this is a book that has allowed me to learn some
9 things about the way that you might think of as natural
10 geography translates into political support and policies
11 ultimately.

12 So in particular this book is about the way in which
13 the Industrial Revolution in the late 1800s and early 1900s
14 shaped distribution of support for political parties in
15 geographic space. So it focuses on the fact that voters for
16 parties of the left are concentrated in city centers and along
17 rail corridors and along lakes and oceans, and voters for the
18 right tend to be more dispersed.

19 So what I'm trying to understand in this book is when
20 that is the natural geography that emerges from the Industrial
21 Revolution, what happens when we draw single-member,
22 winner-take-all electoral districts on top of those -- on top
23 of that geography? This is something that we do in countries
24 that were colonized by Great Britain who have these
25 winner-take-all rules.

1 And so what I'm learning about is what happens when
2 we use electoral districts, small winner-take-all districts
3 versus at-large districts, in a wide variety of settings. And
4 that's a large part of what this book is about, especially
5 trying to understand concentration versus dispersion.

6 Q How many peer-reviewed journal articles do you have on
7 your vitae?

8 A I would say around 20 or 30.

9 Q Are there any articles that are not included on your CV?

10 A There are a couple, yes. There's one article that is, I
11 think, also relevant to the case that recently came out in
12 *Election Law Journal*, and it is about -- it is about
13 gerrymandering and how we recognize gerrymandering.

14 So given the pattern that I just described, the
15 pattern of political preferences and space that I just
16 described, we can expect to see asymmetries emerging in the
17 transformation of votes to seats that come from geography, and
18 we might mistake those for gerrymandering.

19 And so the courts have a very difficult decision --
20 or a very difficult job in trying to disentangle
21 gerrymandering from natural geography. So I've worked on some
22 techniques to understand how to disentangle those and wrote a
23 paper on how courts might do that, how courts might negotiate
24 that difficult question. And so that paper was selected as my
25 common cause as a winner in a contest to develop standards for

1 detecting gerrymandering.

2 Q Are there any other articles on this list that are
3 relevant to this case?

4 A Yes. There's a paper that kind of was a precursor to the
5 one I just described called *Unintentional Gerrymandering:
6 Political Geography and Electoral Bias in Legislatures*. That
7 is a paper that got me started in trying to understand the
8 role of geography and shaping the transformation of votes to
9 seats and ultimately electoral support and policies in
10 different countries. And it's -- again, it's very related to
11 this case both in the techniques that I use and also in some
12 of the substantive questions.

13 There is another one called *The Achilles Heel of
14 Plurality Systems: Geography and Representation in
15 Multi-Party Democracies*, and that one also has a lot to do
16 with how geographic distribution of groups translates into
17 representation, which is also very much at the heart of this
18 case.

19 There is a -- there's some other papers, I think,
20 that are relevant. One in particular is a new paper that I
21 just presented at a conference. I was working on it right at
22 the time that this lawsuit came up, and it is a paper on --
23 that focuses explicitly on at-large versus single-member
24 districts in the United States.

25 Q Is that article included --

1 A That is actually not on my CV.

2 Q Have you written anything in the popular press?

3 A I have. I've been active in some debates about the role
4 of gerrymandering in the current representation of parties in
5 the United States, and I've been involved in some debates
6 about representation and geography. And so there was an
7 article in the *New York Times* that I authored that created a
8 little debate back and forth in some other outlets.

9 But most recently I wrote an article on Ferguson that
10 brought some of the spatial analysis to bear on the question
11 of "Just what kind of place is Ferguson?" because a lot of
12 people around the world were asking themselves that question
13 and were forming their impressions from watching CNN.

14 And as someone who grew up in the area, I understood
15 that those impressions were false, but I wanted to use some
16 data to analyze that. And so I wrote an article that
17 demonstrated what I think a lot of the fact witnesses in this
18 case have already mentioned: That it is an extremely racially
19 integrated place, and it is also a very middle-class place.
20 It does have pockets of poverty, but it is quite a
21 misunderstanding to see the Ferguson-Florissant School
22 District as a impoverished ghetto. It is a place that is
23 largely composed of middle-class homeowners.

24 Q All right. Turning to page 3 of your CV, you have
25 chapters that are included in books. Is this an exhaustive

1 list of that, of those chapters?

2 A I believe so.

3 Q And I count about 13 chapters. Would that be right?

4 A That sounds right.

5 Q And then under "other publications," looks like there
6 were six other publications that you list. Is that
7 exhaustive?

8 A It might not be, but it's close enough.

9 Q Okay. Have you been retained as an expert witness in --
10 well, no. I want to skip that. Do you consult for any
11 organizations?

12 A I do. I work frequently for the World Bank and the IMF.
13 I teach a summer course at the IMF every couple of years, and
14 I'm currently doing a lot of work for USAID.

15 Q We have here on page 4 and 5 a list of fellowships and
16 honors that you've received over the years.

17 A Yes.

18 Q Have you been retained as an expert witness in any
19 election law cases?

20 A Yes. There are three in particular. The first one was
21 *Romo v. Detzner* in Florida, and this was a case in Florida
22 state court in which a group of plaintiffs sued the State
23 of -- the legislature of the State of Florida in regards to
24 constitutional amendment in the State of Florida that forbids
25 the use of partisanship when drawing electoral districts. So

1 you might think of it as a constitutional effort to curb
2 gerrymandering. It was very difficult to enforce, and one
3 part of the enforcement of it was an effort for us to show
4 that there was -- that the efforts of the Florida legislature
5 to draw electoral districts took partisanship into
6 consideration.

7 So I was an expert witness that filed a report on
8 that matter, and we were able to convince the court that it
9 was indeed, according to the Florida constitution, an
10 unacceptable gerrymander. It went to the Florida Supreme
11 Court, and the legislature was forced to redraw the electoral
12 districts.

13 Q So to be clear, were you an expert on the plaintiff's or
14 defense side of that case?

15 A The plaintiff's.

16 Q Any other cases that you've been involved in?

17 A There was another closely related case that was related
18 to the state senate districts in Florida. It was a very
19 similar type of case, under the same law. Before it went to
20 trial, it was settled, and the Florida state legislature
21 agreed to redraw the state senate districts.

22 Q Are you currently working on any other cases besides this
23 one?

24 A I am. There is another Voting Rights case in the state
25 of Virginia. This is a case related to voter identification.

1 The State of Virginia has passed a voter ID law similar to
2 such laws in some other states. And so I'm testifying for a
3 group of plaintiffs that is arguing that this law
4 disenfranchises African Americans.

5 So my part of this law is an effort to understand
6 where are the African Americans and white Virginians who did
7 not have valid voter ID. We've been able to get very nice
8 data set from various Virginia state agencies and were able to
9 draw very fine-grain maps down to the level of the census
10 block where people have voter ID and where they don't and were
11 able to show very clearly that the voter ID law discriminates
12 against African Americans. And so we are including this as
13 part of the effort to have the voter ID law overturned.

14 Q Prior to this case, have you ever been retained by
15 defendants?

16 A No. I believe this is my first experience working for a
17 defendant.

18 Q How did you get involved in this case?

19 A I received a call from you sometime, I imagine, shortly
20 after the suit was filed.

21 Q And did you immediately agree to get involved in this
22 case?

23 A No. You may recall that I did not call you back for
24 quite some time.

25 Q Why was that?

1 A I was deeply conflicted, and I believed that I wanted to
2 testify for the other side. I grew up in the area. I care
3 deeply about voting rights. I care very deeply about voting
4 rights of African Americans and African-American
5 representation, as I think all the previous work I've been
6 discussing attests to. And I believe that it was necessary
7 for there to be change in my hometown, and I thought, "Why
8 would I want to testify for the status quo? That's not
9 something I want to do."

10 But the way I approach these things and other
11 efforts -- other times when I've been asked to serve as expert
12 witness, before I answer, I don't want to work with anyone who
13 I don't believe is absolutely right. So I was also, of
14 course, for all the reasons I've just described in my academic
15 work, fascinated by the case. So before calling back, I
16 realized a lot of the data necessary for this analysis was
17 publicly available.

18 I went to the St. Louis County Board of Election
19 Commissioners, collected precinct-level data on election
20 results, and was fascinated by some of what I learned. Then I
21 went and collected data from the census blocks and block
22 groups and put those together using geographic information
23 systems into the precincts and started analyzing the
24 relationship between turnout and race. I started analyzing
25 the relationship between votes for specific candidates and

1 race. I started understanding patterns of voting and outcomes
2 in the district. And it didn't take me long to realize that a
3 single-member district, election system in the district, is
4 not at all the solution to the problem that I wanted to see
5 fixed. The more I learned, the more I became convinced that
6 if I wanted to be on the side of minority representation in
7 the Ferguson-Florissant School District, it was the defense,
8 in fact, that I should be talking to.

9 So it was only after determining that, that I called
10 you back and asked if you were still interested in finding a
11 witness, and it turned out that you were.

12 Q Do you remember what you said to me when you called me
13 back?

14 A I told you that the way I do expert witness work is not
15 really as an advocate for a cause. It's someone who just
16 wants to lay out the facts. I view the job of an expert
17 witness to provide the court with information, and I said, "I
18 will provide you with all the information that I find, and you
19 might not like some of it, and I'm going to put it in a
20 report. And if you don't like it, that's the way it is. Some
21 of it will be good for your case. Some of it will be bad.
22 We'll see how it happens." And you were comfortable with
23 that.

24 Q How long did it take you to call me back?

25 A Oh, ten days. Maybe more.

1 Q So once you were accepted as our expert witness, what
2 were you asked to do?

3 A I was asked to use the various social scientific tools
4 that I've been describing to apply those to data in the
5 Ferguson-Florissant School District and try to ascertain
6 whether the demographics and voting behavior in the district
7 were consistent with a violation of Section 2 of the Voting
8 Rights Act. In particular, I was asked to examine the three
9 *Gingles* factors and the factors -- the additional factors
10 listed in the Senate report.

11 Q Did you reach an opinion?

12 A I did.

13 Q What was that opinion?

14 A I think it can be summarized briefly as that African
15 Americans are a voting-age majority of the population.
16 Furthermore, in Ferguson-Florissant School District elections,
17 especially ones that are not contaminated by Florissant
18 mayoral elections, there is no observable -- no sizable
19 difference between turnout of African Americans and whites.
20 And so if there's a African-American majority and there's no
21 substantial difference in turnout, it becomes difficult to
22 understand how a valid Section 2 claim can be made.

23 I discovered that not only is it possible for African
24 Americans to elect candidates of their choosing, I discovered
25 that if the plaintiffs are successful and a single-member

1 district system is imposed in the Ferguson-Florissant School
2 District, my conclusion is rather similar to the one that was
3 just stated by Dr. Thurman. It would be a step backward for
4 minority representation for a variety of reasons.

5 Q Just a minute, please. Before we get into the specifics
6 of your report, of your opinion, I'd like to go through
7 briefly and identify the reports that you wrote. So if you
8 could turn in your folder to Defendants' Exhibit A, do you
9 recognize that document?

10 A Will you please state the title of the document?

11 Q "Report of Jonathan Rodden, Ph.D."

12 A Yes.

13 Q Did you review this report prior to signing?

14 A Yes, I did.

15 Q Are there any typos that you would like to correct in
16 this report?

17 A I believe there are.

18 Q Refer you to page 26 on -- paragraph 26 on page 16.

19 A Yes. On page 16, paragraph 26, in the last sentence the
20 number "3" should be "1."

21 Q Does the change of this typo change your conclusions in
22 any way?

23 A No, it does not.

24 Q And are there any other corrections/typographical errors
25 you would like to change?

1 A I believe there was one more.

2 Q Direct you to page 35, paragraph 73.

3 A Yes. I discovered on page 35, paragraph 73, during an
4 exchange in deposition I discovered a mistake in the last
5 sentence. The number "13" -- sorry -- the number "14" should
6 actually be "13" and expressed as a percentage. Instead of
7 "52," it should read "48."

8 Q And does this correction change your conclusions?

9 A No, it does not.

10 Q Does this report accurately reflect your opinion?

11 A Yes, it does.

12 Q And, Your Honor, Exhibit A has been entered into
13 evidence.

14 I will turn you now to Exhibit B entitled
15 "Supplemental Report of Jonathan Rodden, Ph.D.: Bloc Voting
16 and Cohesion." Do you recognize this document?

17 A Yes, I do.

18 Q And did you have a chance to review it prior to signing?

19 A Yes, I did.

20 Q Are there any corrections or typos you would like to
21 make?

22 A Not at this time.

23 Q Does it accurately reflect your opinion?

24 A Yes.

25 Q And, Your Honor, Exhibit B has been admitted into

1 evidence.

2 I'd like you to -- take you to Defendants' Exhibit C
3 entitled "Supplemental Report of Jonathan Rodden, Ph.D., and
4 Jowei Chen, Ph.D.: Assessment of Plaintiffs' Redistricting
5 Proposals."

6 A Yes.

7 Q Is this something that you prepared?

8 A Yes.

9 Q When did you prepare it?

10 A It's dated July 2, 2015.

11 Q Why did you prepare this supplemental report?

12 A It was a -- I believe I now realize that the technical
13 term should have been "rebuttal report." It was a rebuttal to
14 the work of Dr. Gordon and Mr. Cooper.

15 Q And what does it concern?

16 A The topics covered in this report are related to
17 primarily assessments of the plaintiffs' redistricting
18 proposals.

19 Q Did you write the entire report?

20 A I did.

21 Q Did you read the report before you signed it?

22 A Yes, I did.

23 Q Do you have any changes to this report?

24 A No.

25 Q It says it's co-authored by Dr. Chen. What does that

1 mean?

2 A I was working to finish three reports on a short time
3 schedule. There was a section of the analysis with which I
4 thought I could use some assistance. I reached out to a
5 former student of mine, who has now become a professor at my
6 alma mater, University of Michigan. We work together
7 frequently as collaborators, and I asked him if he could help
8 me out in a pinch and help write some computer code to conduct
9 a part of the analysis. He did so, and we collaborated on
10 that. I sent him the data. He helped me put together the
11 code. I verified the code, ran the code, checked on it, and
12 approved of it, and included the analysis that emerged from
13 that in the report.

14 Q So you reviewed the computer code for accuracy?

15 A I did.

16 Q You ran the analysis independently?

17 A Yes.

18 Q You wrote up the results?

19 A Yes.

20 Q Why was Dr. Chen included on the title of this report?

21 A It's the way Professor Chen and I work. And we offer
22 each other status as co-authors when we work together. And
23 sometimes he's doing more of the work, and sometimes I am.
24 That's been our standard, and that's the standard in my
25 discipline. That's the why co-authorship is typically done.

1 Q Can all of the results in this report be replicated?

2 A Yes.

3 Q I want you to refer specifically to paragraphs 12 through
4 16.

5 A Yes.

6 Q Did you write those paragraphs?

7 A I did.

8 Q And this report accurately reflects your opinions?

9 A Yes.

10 MS. ORMSBY: Your Honor, I would move that Exhibit C
11 be entered into evidence.

12 THE COURT: Any objection?

13 MR. HO: Yes, Your Honor. The plaintiffs object. At
14 best, there is an inadequate foundation for this report
15 insofar as there's testimony in the record from Dr. Chen that
16 he, in fact, was the author of the paragraphs that Ms. Ormsby
17 just referenced. At worst, the report is hearsay to the
18 extent that Dr. Chen is correct that he is the one who wrote
19 the report, because it's an out-of-court statement.

20 MS. ORMSBY: Your Honor, I would ask you, if you have
21 any questions, to review the deposition in which he refers,
22 because Professor Chen says that he wrote language that Dr.
23 Rodden edited and included in the report.

24 In addition to that, Your Honor, plaintiffs raised
25 this issue -- did not raise this issue during discovery, but

1 they only inappropriately raised it in their trial brief. In
2 response, we filed an affidavit from Dr. Rodden that clearly
3 explains the fact that he wrote the entire report.

4 THE COURT: I will read Dr. Chen's deposition
5 testimony, but not to hide anything, I suspect that having
6 people assist you in doing data compilation is pretty standard
7 for experts and that it would not be unusual for an expert to
8 rely on that type of assistance. And the fact that he gave
9 him credit as opposed to just saying, you know, "I had
10 somebody do some computer runs for me," doesn't invalidate or
11 undermine the validity of the report that he says are his
12 opinions.

13 But on cross-examination you can explore if this is
14 the type of information an expert would typically rely on, but
15 I suspect it is.

16 MR. HO: Thank you, Your Honor.

17 THE COURT: Thanks.

18 Q (BY MS. ORMSBY) Finally, Dr. Rodden, I will take you to
19 Exhibit D, which is entitled "Supplemental Report of Jonathan
20 Rodden, Ph.D.: Senate Factors." Do you see that?

21 A I do.

22 Q Did you review this report prior to signing?

23 A Yes, I did.

24 Q Do you have any typos or corrections to make?

25 A Nope.

1 Q Does this report accurately reflect your opinion?

2 A Yes, it does.

3 Q And, Your Honor, Exhibit D has already been entered into
4 evidence.

5 Dr. Rodden, what census data did you rely on to
6 analyze the Ferguson-Florissant School District's population
7 and demographics?

8 A I relied on a variety of different sources. Overall, I
9 looked at -- when establishing the historical approach, in
10 part of the paper I used 2000 decennial census data. I also
11 used 2010 decennial census data. Those decennial census data
12 at the level of blocks were used to understand to count up
13 people and voting-age people of different races at the level
14 of the precincts.

15 So I had to use the block-level decennial census
16 data, as I believe was the case for Dr. Engstrom. We had to
17 use the 2010 decennial census data. Unlike Dr. Engstrom, I
18 also had to use the 2000 decennial census data because my
19 report covered quite a bit more years than his. And so to
20 have the right data for the earlier years, I had to use the
21 decennial census from 2000.

22 So in addition to decennial census data, I also
23 examined data from the American Community Survey, as, I
24 believe, did many of the other experts who have testified in
25 this trial. I used data from the three-year version of the

1 American Community Survey, and I used several of those
2 three-year chunks when examining the trend in population in
3 the school district.

4 And I relied finally at the end of that -- of the
5 most recent data I used was the most recent three-year
6 American Community Survey, ACS, and that was the one that was
7 collected in the years 2011, 2012, and 2013. Again, they're
8 packaged together into something we call the three-year ACS.

9 Q So when we say "ACS," we're referring to the American
10 Community Survey, correct?

11 A Yes.

12 Q Why do we have the ACS?

13 A The Census Department was attempting to update and
14 modernize its operation. In recent years they determined that
15 they made the decision that it was inefficient to send a
16 really large army of people to every household to try to
17 collect a vast array of data on a variety of social and
18 ecological indicators. In the old days, they would come to
19 your house with a very long form, and they would ask you
20 everything. They would ask you about your place of birth.
21 They would ask your marital status. They would ask about
22 whether you owned or rented, so on. You know many of these
23 census variables. There's a large number of them.

24 There were a lot of reasons why this didn't work
25 well. One of the reasons is it really required a lot of human

1 capital to hire that many people to go and do that much work.
2 And they determined that this was an inefficient way to
3 collect that information, especially with the advance in
4 modern sampling technology.

5 So they developed a much better way of sampling, and
6 they decided it was better to collect these data from
7 sampling. So what they would do is send out every year,
8 beginning in the middle of the last decade -- so in 2008, I
9 believe -- they started sending out a survey to a sample of
10 households, a well-crafted, well-chosen sample of households.
11 And they would collect all that information they used to
12 collect in the decennial census, and they would collect it
13 every year.

14 And in order to have large enough sample sizes for
15 people to make the inferences that they wanted to make, they
16 would release that data in chunks. They would release it in
17 five-year chunks and three-year chunks. These became known as
18 the five-year and the three-year ACS. And these are the
19 friend of every social scientist who wants to do anything
20 interesting in the United States.

21 It doesn't mean they did away with the decennial
22 census. They still go around and collect a lot of people and
23 hire a new team. You can actually see in the employment
24 statistics every ten years a bump when they go and they
25 collect a lot of people and put them to work going house to

1 house to collect all this information.

2 But now instead of asking you about, you know, your
3 place of birth and all these other variables, they ask you a
4 few very simple variables, and they move on. They ask you
5 your race, your age, whether you rent or own your home, and
6 maybe one or two other things, and then they move on. So that
7 means for people like me, who want to do analysis of things
8 like education by race, we have to rely on the ACS. And that
9 is how the ACS came about.

10 It is not -- I think there was a bit of a confusion
11 earlier. A distinction was made between the census and the
12 ACS. The ACS is the census. It was created by the Census
13 Department. It is a census product. That's how we get our
14 data to do our work in the social sciences.

15 Q Does the Census Bureau give us guidance on which ACS to
16 use when?

17 A It does.

18 Q I'd like to refer you to Exhibit Q. What is this
19 document?

20 A It is a guideline that the Census Department publishes
21 that tells people under what conditions they might choose to
22 use the one-year ACS estimate for some indicator or the
23 three-year estimate or the five-year estimate.

24 Q Go ahead.

25 A That's better. Thank you. And it explores trade-offs.

1 So a researcher, when they're deciding what they'd like to
2 use, what kind of census product they'd like to use, they have
3 trade-offs. You have to think about what is the size of the
4 community that you're trying to understand. You have to ask
5 yourself whether the sample size is large enough to learn
6 anything about the quantity of interest. But you also have
7 something that you might care about, which is the recency of
8 the data, and in this case it seemed very clear that having
9 recent data was something that we cared about.

10 So, you know, for any research question you've got
11 kind of a matrix of things you might care about. You've got
12 to try to decide what's the right census product for you. In
13 this case, there wasn't really much debate. It was clear we
14 wanted recent data and we wanted something that would work for
15 this community of the size of the Ferguson-Florissant School
16 District.

17 Q So it's your belief that the three-year estimate is the
18 proper ACS to use for the Ferguson-Florissant School District?

19 A Yes. And I believe this demonstrates that. It says it's
20 appropriate for areas with population larger than 20,000.

21 Q And what's the population of the Ferguson-Florissant
22 School District?

23 A It's more than 60,000.

24 Q Does the Census Bureau give us any documents giving
25 guidance on how to use the ACS?

1 A I believe so. In addition to this, there are some
2 others.

3 Q We're going to look at Plaintiffs' Exhibit 133. If you
4 can turn to page 1 of that document. Does this tell you what
5 subjects are appropriate to review -- to use for review of the
6 ACS?

7 A Yes. In fact in that green box, we see many of the
8 characteristics that I was referring to, the kinds of things
9 that people like me really like to spend time diving into.

10 Q Specific to this case, is there characteristics that you
11 would use it to rely on?

12 A We see right at the beginning we have age, and we have
13 race, and those are some important variables in this case.

14 Q And if you look up on that page a little bit at the end
15 of the first column, can you read the very last sentence of
16 that paragraph? Beginning with "The ACS."

17 A "The ACS is a nationwide, continuous survey designed to
18 provide communities with reliable and timely demographic,
19 housing, social, and economic data every year."

20 Q So does that indicate that the Census Bureau believes
21 this to be a reliable document?

22 A It does.

23 Q If you would turn to page 2, please, of this same
24 document. Does this page tell you who relies on the ACS?

25 A Yes.

1 Q And in the box there, would it indicate what agencies
2 rely on the ACS?

3 A It indicates federal agencies, nongovernmental
4 organizations, journalists, state and local governments, and
5 for some reason they leave out college professors and their
6 students.

7 Q Can you rely on the ACS for population figures?

8 A Yes. Certainly. These are all population figures. All
9 of these, the things we're talking about, are counts of people
10 who fit into various categories. Race is a particularly broad
11 category.

12 Q Do you agree with plaintiffs' expert that the ACS is
13 unreliable?

14 A No, I do not.

15 Q You've heard some of the experts say that we shouldn't
16 use the ACS as a population estimate because Missouri state
17 law requires decennial census. Do you agree with that?

18 A I believe that is a very --

19 MR. HO: Objection. Calls for a legal conclusion,
20 Your Honor.

21 THE COURT: Asked if he agreed with it. Didn't say
22 what his legal opinion was. It's a subtle distinction, but
23 I'll take it for what it's worth. Obviously, ultimately, if I
24 was instructing a jury, I would tell them whether to rely on
25 it or not to figure it out, and you'll convince me one way or

1 the other when the case is over, but I'll let him talk about
2 it.

3 A Certainly. This is easy to clear up. There's a
4 simple -- a misunderstanding. I've heard several times in the
5 plaintiffs' testimony that it's necessary to use the official
6 population counts from the decennial census for the purposes
7 of redistricting, but in my expert analysis in this case, I
8 did not conduct any redistricting, while in other cases I've
9 conducted quite a bit of redistricting. I've drawn thousands
10 of redistricting plans. I'm quite aware of the need to use
11 decennial census data in official counts when redistricting.

12 In fact, it's impossible to redistrict without using
13 decennial census data, because we need to be able to drill all
14 the way down to the blocks in order to fit those blocks within
15 the boundaries that might create something like, say, a school
16 board district in the Ferguson-Florissant School District.

17 I am not writing reports about redistricting. In
18 fact, I believe I am defending a party that is opposed to
19 redistricting. So I don't see what the redistricting laws
20 have to do with my use of ACS.

21 Q Can you tell the Court about sampling error?

22 A Yes. This is, of course, in that figure we were looking
23 at just a moment ago in which there were instructions about
24 how to use the ACS, one of the things mentioned was the fact
25 that it's a sample. It's a survey. And when moving from the

1 decennial census to the ACS, the Census Department understood
2 what it was doing. It was moving from a count to a sample for
3 most of the things that we care about learning. The reason
4 for doing this is because a sample can give us a very good
5 snapshot of a very good estimate of the things we're trying to
6 count. This is the way we do things.

7 But, of course, any time there's a sample, there is
8 going to be sampling error. But the nice thing about it is we
9 can quantify it. The Census Department always gives us the
10 confidence intervals. It gives us a margin of error. And I
11 think we've had several nice demonstrations from the other
12 plaintiffs' witnesses, high-quality representations of what a
13 confidence interval is, and I won't repeat it now. But
14 samples always have sampling error. That is a fact of life.

15 Q Because it's a sample, does that mean it's not reliable?

16 A That would mean that social scientists can't do anything;
17 so, no, I certainly hope that is not the case.

18 Q Are there any issues of reliability when it comes to the
19 decennial census?

20 A In fact there are, and that's one of the reasons why the
21 census has been changing the way it does things. So after
22 every decennial census, the Census Department tries to look
23 back over its operation and see how well it did. And the way
24 they go about trying to see how well they did is they sample a
25 survey. And they do a very good job with the survey. They

1 put a lot of effort and resources into this survey, and they
2 try to get it right. And they try to learn from the sample
3 what did we get wrong a couple of years ago when we did the
4 decennial census?

5 Q How do they --

6 MR. HO: Your Honor, we're going to object to this
7 line of questioning. There's nothing in Dr. Rodden's reports
8 that criticizes the enumeration of the decennial census and
9 its accuracy.

10 MS. ORMSBY: Your Honor, I would just say we're
11 trying -- the ACS has been criticized greatly as being
12 unreliable by plaintiffs in this case, and we are just
13 comparing the reliability of the census to the reliability of
14 the ACS and showing that the census is not foolproof either.
15 Neither document is completely foolproof.

16 MR. HO: And we made those arguments, Your Honor, and
17 our experts made those arguments in their initial expert
18 reports and their rebuttal reports in this case, and Dr.
19 Rodden had ample opportunity in his rebuttal reports to make
20 whatever points he wants to make about the decennial
21 enumeration and declined to do so.

22 So at this point what's good for the goose should be
23 good for the gander, Your Honor. We weren't allowed to put in
24 evidence about the five-year ACS estimate. I don't see why
25 defendants can put in their criticism of the decennial

1 enumeration when they have made no reference to that
2 whatsoever in this case prior to --

3 THE COURT: Well, in the case of the five-year ACS,
4 nobody had disclosed it one way or the other. Here we're
5 having a general conversation about your experts attack the
6 ACS as unreliable or at least the margin of error being so
7 great you can't -- you shouldn't use it.

8 I'll give him some latitude to explain why he thinks
9 it's effective. You'll get to cross-examine on it. And
10 ultimately if you think that there's sufficient prejudice I
11 should strike his testimony, we can take that up post-trial;
12 so much so that I shouldn't rely on it, I will keep the door
13 open to that conversation.

14 MR. HO: Thank you, Your Honor.

15 MS. ORMSBY: I forgot what my question was.

16 THE COURT: Do you want to know what your question
17 was?

18 MS. ORMSBY: I would love that, Your Honor. Thank
19 you.

20 THE COURT: Do you want to read it back?

21 **(QUESTION READ BACK BY THE COURT REPORTER.)**

22 Q Are there any issues regarding the reliability of the
23 decennial census?

24 A As I believe I was describing the follow-up survey that
25 the Census Department does, and when they do that, they always

1 issue a report, and it's based on a sample survey. And they
2 tell us about the errors in the last census, some undercounts
3 and overcounts and so forth.

4 Q I'll refer you to Defendants' Exhibit R. Does the census
5 disclose what their errors are at any point in time?

6 A Yes. I believe this document is a release of that
7 information.

8 Q And if we can go down to "variation by characteristics,"
9 if you could enlarge that area, please. The third paragraph
10 down, could you read that out loud, please?

11 A I'm going to have a hard speaking into the microphone and
12 doing that at the same time because I don't believe I see it.

13 Q Can you look at your screen, perhaps? It's enlarged.
14 Does that help?

15 A "As with prior censuses, coverage varied by race and
16 Hispanic origin. The 2010 census overcounted the non-Hispanic
17 white alone population by .8 percent, not statistically
18 different from an overcount of 1.1 percent in 2000." So we're
19 looking at about a 1percent overcount of whites in the
20 decennial census.

21 Q Could you read the next paragraph down, please?

22 A "The 2010 census undercounted 2.1 percent of the black
23 population, which was not statistically different from the 1.8
24 percent undercount in 2000. In 2010, 1.5 percent of the
25 Hispanic population was undercounted. In 2000, the estimated

1 undercount of .7 percent was not statistically different from
2 zero. The difference between the two censuses was also not
3 statistically significant."

4 Q Then further down on this document, does it tell you when
5 it is significant and when it's not, depending on population?
6 Can you highlight that? Do you see the second bullet down
7 under "other findings"?

8 A "The survey did not measure a statistically significant
9 undercount or overcount for the population in any counties or
10 places of 100,000 or more."

11 Q And is the Ferguson-Florissant School District population
12 in excess of 100,000?

13 A No, it's not.

14 MS. ORMSBY: Your Honor, I would move the -- I would
15 move Exhibit R be accepted into evidence.

16 MR. HO: Your Honor, we objected to it as hearsay.
17 It's not an official government record. It's a press release.
18 It's of the same kind of nature of the newspaper.

19 THE COURT: I won't receive it as substantive
20 evidence, but to the extent that he uses it and it's the type
21 of material an expert traditionally relies on, it overcomes
22 the hearsay exception but only to the extent it contributes to
23 his opinion, not as proof of what it says.

24 MS. ORMSBY: Your Honor, I do believe it does fit
25 under a hearsay exception.

1 THE COURT: Okay.

2 MS. ORMSBY: 803(8)(A). A record or statement of a
3 public office, which is the census, it sets out its office
4 activities, and the opponent does not show that the source of
5 information or other circumstances indicated a lack of
6 trustworthiness.

7 And I refer you to case *U.S. Equal Opportunity*
8 *Commission v. E.I. DuPont De Nemours*, and in that case it was
9 exactly this sort of a situation where the court did rely on
10 it. It was downloaded from the internet. It was a printout
11 from the internet. It had --

12 THE COURT: What agency was it?

13 MS. ORMSBY: It was the -- a printout from the
14 census.

15 THE COURT: In what circuit?

16 MS. ORMSBY: It was the Eastern District of
17 Louisiana.

18 THE COURT: Oh, okay. Not Judge Vance, by chance,
19 then you'll lose. If Sarah Vance wrote it, I'm done. But
20 I'll give you the opportunity to rebut it, okay? That's where
21 we are.

22 MR. HO: Okay.

23 THE COURT: He can certainly rely on it, use it if
24 experts typically rely on it and use it, which I don't think
25 that will be a substantial evidentiary foundation question,

1 but I will leave the door open for you to challenge the
2 reliance on that.

3 MR. HO: Thank you, Your Honor. Just so the record
4 is clear, to the extent that he is opining on this document,
5 we would object to this testimony in, you know, as we objected
6 previously.

7 THE COURT: Understood. If the foundation is laid
8 that this is the type of information an expert would typically
9 rely on in this type of case, that piece of it is overruled
10 for sure.

11 MR. HO: Thank you, Your Honor.

12 Q (BY MS. ORMSBY) Thank you, Your Honor.

13 Looking at the demographics of the
14 Ferguson-Florissant School District in terms of population
15 beginning in 1990 to 2010, I know you only looked back to
16 2000, but you've reviewed Dr. Cooper's report that went back
17 to 1990. Correct?

18 A Yes.

19 Q And I'll refer you to Cooper's initial report, page 8,
20 Table 2. He'll make it larger for you. What are your
21 conclusions regarding population in the Ferguson-Florissant
22 School District from 1990 to at least 2010?

23 A We see here that the African-American population was --
24 if we look at the African-American population, including
25 Hispanics, the number in -- the figure in 1990 is 28.65

1 percent. Then in the 2000 decennial census it increases to
2 around 37 percent, and then in 2010 it increases to 52.2
3 percent.

4 And then, more recently, there are also data
5 available on any-part African American, including Hispanic,
6 and we see that that has ended up in the 2010 census as almost
7 54 percent. So 54 percent of the Ferguson-Florissant School
8 District population is African American or was African
9 American back in 2010.

10 If we then look --

11 Q I want to stop you there. Do you agree with Dr. Cooper's
12 conclusions here?

13 A I do. These are census data that I do not dispute.

14 Q Okay. What happened to the demographics after 2010?

15 A I've -- that's the point at which we have to move beyond
16 the 2010 decennial census. We have to move beyond the
17 decennial census products, and we have to start to examine the
18 data from the ACS.

19 Q I'll have you refer to your supplementary report, Exhibit
20 C. Table 1 on page 3. And what does the 2011-2013 ACS tell
21 us about any-part black population?

22 A The 2011 to 2013 American Community Survey three-year
23 estimate tells us that the any-part African-American
24 population in the district -- so when we put together those
25 three years of the ACS, we see that the number is in line --

1 looks like line 12 it is around 55 percent of the population.
2 So it's gone up by a percentage point since the 2010 decennial
3 census according to these estimates.

4 Q And the non-Hispanic white population?

5 A It's 42.2 percent.

6 Q And has the --

7 A I'm sorry. That includes Hispanic. I'm wrong. Down
8 below, right above where we were, the number is 41.3 percent.
9 That's white alone, non-Hispanic.

10 Q Let's look at Defendants' Exhibit X, which is a
11 demonstrative exhibit, I believe. Boy, that's hard to see on
12 this screen. Can you see those lines?

13 A I can. They look fine on my screen.

14 Q Well, it must be my screen. Does this graph give you a
15 visual of what has happened with the voting-age population
16 with regard to non-Hispanic white and single-race black
17 population?

18 A So, right, just to be clear, these data come from similar
19 sources, but we're looking at individuals who are 18 years and
20 over. That's what we mean by voting-age population. And we
21 see here -- when we look at these data, we see a very -- a
22 similar trend to the overall population. However, the
23 transition in the overall population has been much more rapid.

24 So we noticed that there was already a substantial --
25 a substantial African-American majority of the population in

1 the 2010 census. What we see here is a similar trend. But
2 when we're looking at people who are above the age -- or who
3 are 18 and older, we see that in the 2010 decennial census the
4 two lines have not yet crossed, and that's because of some
5 important demographic differences between African Americans
6 and whites.

7 The white population, as was discussed in my report,
8 is considerably older than the African-American population.
9 African-American families tend to be younger, and so there's a
10 large -- in the 2010 decennial census, there was a large
11 cluster of individuals right on the cusp of turning 18,
12 whereas for whites there are far fewer individuals in that
13 category. And, of course, as I believe the testimony has
14 revealed, this translates into a school-age population that is
15 overwhelmingly African American. It also translates into
16 enrollment in the Ferguson-Florissant public schools that is
17 overwhelmingly African American.

18 That fact does not come from anything related to
19 private schooling. The school-age population is
20 overwhelmingly African American. That's what the data reveal.
21 So what we see is that the trend in voting-age population is
22 over time catching up, of course, with the trend in
23 population. The only way that wouldn't be true is if some
24 individuals failed to turn 18 or left the district.

25 So what we see in this graph is that we're basically

1 at equality in the 2010 census, and by the time we get the
2 2011 to 2013 sample in and we can look at those estimates, we
3 see that the lines have crossed.

4 Q And just to be clear with the Court, where the dotted
5 line turns into a solid line, that's from the census data.
6 The solid line reflects the ACS data; is that correct?

7 A Yes. There's a transition here in the graph. Dotted
8 lines for the decennial census, and then when it transitions
9 to the ACS, there is a solid line.

10 Q Now, these solid lines do not show a projection; is that
11 correct?

12 A No. There is no projection in this demonstration.

13 MS. ORMSBY: Your Honor, this would be a great place
14 to break. We're going to go into a new subject.

15 THE COURT: You're going into a new topic. That's
16 fine. All right.

17 We will reconvene in the morning at nine o'clock. I
18 have informals at nine. Typically, I just swear in a few
19 attorneys. If anyone needs to be the Western District of
20 Missouri, I'm Eastern and Western. I'll give you a twofer if
21 you're ready tomorrow morning. Anything before we break?

22 MS. EBENSTEIN: No, Your Honor.

23 MS. ORMSBY: No, Your Honor.

24 THE COURT: All right. Thank you all.

25 **(PROCEEDINGS CONCLUDED AT 5:07 PM.)**

CERTIFICATE

I, Shannon L. White, Registered Merit Reporter and Certified Realtime Reporter, hereby certify that I am a duly appointed Official Court Reporter of the United States District Court for the Eastern District of Missouri.

I further certify that the foregoing is a true and accurate transcript of the proceedings held in the above-entitled case and that said transcript is a true and correct transcription of my stenographic notes.

I further certify that this transcript contains pages 1 through 215 inclusive and that this reporter takes no responsibility for missing or damaged pages of this transcript when same transcript is copied by any party other than this reporter.

Dated at St. Louis, Missouri, this 23rd day of February, 2016.

/s/Shannon L. White
Shannon L. White, CRR, RMR, CCR, CSR
Official Court Reporter